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

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

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.

Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director.

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.
In This Issue

GOVERNOR
Appointments.................................................................6203

ATTORNEY GENERAL
Requests for Opinions.....................................................6207
Opinions...........................................................................6207

PROPOSED RULES
OFFICE OF THE SECRETARY OF STATE
ELECTIONS
1 TAC §81.172.................................................................6209
1 TAC §81.173.................................................................6216
1 TAC §81.174.................................................................6222

PUBLIC UTILITY COMMISSION OF TEXAS
SUBSTANTIVE RULES APPLICABLE TO
ELECTRIC SERVICE PROVIDERS
16 TAC §25.5.................................................................6230
16 TAC §25.109.................................................................6230
16 TAC §25.101.................................................................6231

TEXAS STATE BOARD OF PHARMACY
LICENSE REQUIREMENTS FOR PHARMACISTS
22 TAC §§283.7, 283.8, 283.11 .........................................6232

PHARMACIES
22 TAC §291.34.................................................................6233

TEXAS STATE BOARD OF EXAMINERS OF
PSYCHOLOGISTS
APPLICATIONS AND EXAMINATIONS
22 TAC §463.4.................................................................6236
22 TAC §463.15.................................................................6236
22 TAC §463.27.................................................................6237

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF
WORKERS’ COMPENSATION
MONITORING AND ENFORCEMENT
28 TAC §§180.1, 180.3 - 180.5, 180.8 - 180.10 .......................6242
28 TAC §180.27.................................................................6246

COMPTROLLER OF PUBLIC ACCOUNTS
PROPERTY TAX ADMINISTRATION
34 TAC §9.105.................................................................6248
34 TAC §9.1002.................................................................6248
34 TAC §9.3060.................................................................6249

TEXAS DEPARTMENT OF MOTOR VEHICLES
EMPLOYMENT PRACTICES

43 TAC §208.42, §208.44....................................................6250
43 TAC §208.43.................................................................6250

ADOPTED RULES
OFFICE OF THE ATTORNEY GENERAL
CHILD SUPPORT ENFORCEMENT
1 TAC §§55.116, 55.118 - 55.120 ........................................6253

OFFICE OF THE SECRETARY OF STATE
ELECTIONS
1 TAC §81.420.................................................................6253

STATE OFFICE OF ADMINISTRATIVE HEARINGS
RULES OF PROCEDURE
1 TAC §155.101.................................................................6254
1 TAC §155.101.................................................................6255
1 TAC §155.501.................................................................6257

TEXAS HEALTH AND HUMAN SERVICES
COMMISSION
REIMBURSEMENT RATES
1 TAC §355.457.................................................................6259
1 TAC §355.722.................................................................6260

PUBLIC UTILITY COMMISSION OF TEXAS
PROCEDURAL RULES
16 TAC §22.183.................................................................6263

TEXAS EDUCATION AGENCY
TEXAS ESSENTIAL KNOWLEDGE AND SKILLS
FOR TECHNOLOGY APPLICATIONS
19 TAC §§126.1, 126.5 - 126.7 ........................................6284
19 TAC §§126.11, 126.13 - 126.16 .....................................6286
19 TAC §§126.21, 126.31 - 126.50 .....................................6290
19 TAC §§126.61 - 126.64 ................................................6299

TEXAS STATE BOARD OF EXAMINERS OF
PSYCHOLOGISTS
RULES OF PRACTICE
22 TAC §465.1.................................................................6300
22 TAC §465.18.................................................................6301

COMPTROLLER OF PUBLIC ACCOUNTS
STATE ENERGY CONSERVATION OFFICE
34 TAC §§19.31 - 19.34 ................................................6303

RULE REVIEW
Proposed Rule Reviews
Texas Workforce Commission ........................................6305

TABLE OF CONTENTS 36 TexReg 6201
Adopted Rule Reviews
Texas Department of Insurance, Division of Workers’ Compensation .......................................................... 6305

IN ADDITION
Office of the Attorney General
Agreed Final Judgment .................................................. 6307
Comptroller of Public Accounts
Notice of Contract Amendment ........................................ 6307
Notice of Contract Amendment ........................................ 6307
Office of Consumer Credit Commissioner
Notice of Rate Ceilings.................................................. 6308
Texas Education Agency
Public Notice Announcing the Availability of Waiver Request to U.S. Department of Education for School Improvement Grants Transformation Schools to Extend Timeline for Implementation of Evaluation Systems; Request for Related Public Comments ............................................. 6308
Education Service Center Region 10
Request for Applications................................................ 6309
Texas Commission on Environmental Quality
Agreed Orders ............................................................. 6309
Notice of Water Quality Applications ................................ 6312
Texas Superfund Registry .............................................. 6314
Texas Board of Professional Geoscientists
Advisory Opinion - AOR #5 (2011) .................................. 6316
Advisory Opinion Request - AOR #6 (2011) ...................... 6316
Texas Health and Human Services Commission
Public Notice ............................................................. 6316
Department of State Health Services
Licensing Actions for Radioactive Materials .................... 6317
Heart of Texas Council of Governments
Request for Proposal - Auditing Services ....................... 6321
Texas Judicial Council
Request for Applications for Texas Counties - FY 2012 Formula Grant Program .................................................. 6321
Texas Lottery Commission
Instant Game Number 1367 "Black Onyx 7’s" .................... 6321
Instant Game Number 1371 "Holiday Gold" ....................... 6325
Instant Game Number 1389 "Find the 9’s" ......................... 6329
North Central Texas Council of Governments
Notice of Consultant Contract Award ................................ 6332
Public Utility Commission of Texas
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority ........................................ 6333
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority ........................................ 6333
Announcement of Application for State-Issued Certificate of Franchise Authority ........................................ 6333
Notice of Amended Application for Designation as an Eligible Telecommunications Carrier ........................................ 6333
Notice of Application for a Service Provider Certificate of Operating Authority ............................................. 6334
Notice of Application for Amendment to Certificated Service Area Boundary ............................................. 6334
Notice of Application for Retail Electric Provider Certification .... 6334
Notice of Application for Retail Electric Provider Certification .... 6334
Notice of Application for Service Area Exception .................. 6335
Notice of Application for Waiver from Requirements in P.U.C. Substantive Rule §26.130(c)(1)(C)(i) ................. 6335
Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line .................. 6335
Notice of Application to Defer Expenses ........................... 6336
Texas State Technical College System
Request for Proposals for Outside Counsel ....................... 6336
Texas Department of Transportation
Cancellation of Notice of Intent - Loop 375 Border Highway West, El Paso, Texas ............................................. 6336
Notice of Intent - Loop 375 Border Highway West Extension Project, El Paso County, Texas ............................................. 6336
Texas Water Development Board
Applications for September 2011 ..................................... 6337
Notice of Public Hearing ............................................. 6338
Appointments

Appointments for September 2, 2011

Pursuant to SB 166, 82nd Legislature, Regular Session, appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2012, Elizabeth "Christy" Jack of Fort Worth.

Pursuant to SB 166, 82nd Legislature, Regular Session, appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2012, Leonardo "Leo" Longoria of McAllen.

Pursuant to SB 166, 82nd Legislature, Regular Session, appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2013, Daniel P. "Dan" Powers of Carrollton. Daniel P. "Dan" Powers will also serve as presiding officer of the board for a term to expire at the pleasure of the Governor.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Juvenile Justice Services and Facilities Transition Team for a term at the pleasure of the Governor, Chelsea Buchholtz of Austin.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Juvenile Justice Services and Facilities Transition Team for a term at the pleasure of the Governor, Albert Hawkins, III of Austin.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Juvenile Justice Services and Facilities Transition Team for a term at the pleasure of the Governor, D. Scott Matthew of Georgetown.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Juvenile Justice Services and Facilities Transition Team for a term at the pleasure of the Governor, Ruth Jones McClendon of San Antonio.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Juvenile Justice Services and Facilities Transition Team for a term at the pleasure of the Governor, Vicki Spriggs of Austin.

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2017, Patricia "Patty" Brannon of San Antonio (reappointed).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2017, Vickie B. Dionne of Nederland (reappointed).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2017, Sonya Salinas of Mission (reappointed).

Appointment to the Texas Emergency Services Retirement System for a term to expire September 1, 2017, Don R. Shipman of Colleyville (reappointed).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2017, Stephen K. Williams of Cartage (reappointed).


Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2017, Joe M. Gurecky of Rosenberg (Mr. Gurecky is being reappointed).

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2017, John K. Hatchel of Woodway (replacing Rolf Haberecht of Dallas whose term expired).

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2017, Joe K. Hearne of Dallas (Mr. Hearne is being reappointed).

Appointment to the Texas State Board of Plumbing Examiners, effective September 5, 2011, for a term to expire September 5, 2017, Enrique Castro of El Paso (Mr. Castro is being reappointed).

Appointed to the Texas State Board of Plumbing Examiners, effective September 5, 2011, for a term to expire September 5, 2017, Janet L. Gallagher of Pflugerville (replacing Carol McLemore of La Marque whose term expired).

Appointed to the Texas State Board of Plumbing Examiners, effective September 5, 2011, for a term to expire September 5, 2017, Ricardo J. Guerra of Austin (Mr. Guerra is being reappointed).

Appointments for September 6, 2011

Designating Robert Schmidt as presiding officer of the Texas Racing Commission for a term at the pleasure of the Governor. Dr. Schmidt is replacing Rolando Pablos of Olmos Park as presiding officer.

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2017, Stanley N. Mathews of Orange (reappointed).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2017, Clifford R. Todd of Cartage (reappointed).

Pursuant to HB 2549, 82nd Legislature, Regular Session, appointed to the State Employee Charitable Campaign Policy Committee for a term to expire January 1, 2012, Monica H. Hearne of Austin.

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 2013, Zoe M. Barinaga of Houston (Ms. Barinaga is being reappointed).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2013, George W. Brown, III of Beaumont (reappointed).
Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2013, Russell S. Covington of Orange (reappointed).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2013, William F. Scott of Nederland (reappointed).


Appointed to the State Independent Living Council for a term to expire October 24, 2013, Saul Herrera of Midland (Mr. Herrera is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2013, Karen Swearingen of Rowlett (Ms. Swearingen is being reappointed).

Appointed Ex-Officio to the State Independent Living Council, Elizabeth P. Dennis of Austin (replacing Glenda Embree of Austin).

Appointed Ex-Officio to the State Independent Living Council, Lance A. Hamilos of Round Rock (replacing Larry Gardner of Cedar Park who is deceased).


Appointed to the State Independent Living Council, effective October 24, 2011, for a term to expire October 24, 2014, Crystal Choi of Fort Worth (replacing Michelle Crain of Lubbock whose term expired).

Appointed as Chief Justice of the Eighth Appellate District, effective October 12, 2011, for a term until the next General Election and until her successor shall be duly elected and qualified, Ann McClure of El Paso. Justice McClure is replacing Chief Justice David Chew who resigned.

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, Commissioner Barry Smitherman of Austin. Commissioner Smitherman is replacing Commissioner David J. Porter as the Official Representative of Texas.

Designating Vickie B. Dionne as presiding officer of the State Board of Examiners for Speech-Language Pathology and Audiology, pursuant to SB 662, 82nd Legislature, Regular Session, for a term at the pleasure of the Governor.

Appointed as Justice of the Eighth Appellate District, Place 2, effective October 12, 2011, for a term until the next General Election and until his successor shall be duly elected and qualified, Christopher Antcliff of El Paso. Judge Antcliff is replacing Justice Ann McClure who was appointed Chief Justice of the Eighth Appellate District.

Pursuant to SB 1, 82nd Legislature, First Called Session, designating Ivan A. Andarza as presiding officer of the Texas Guaranteed Student Loan Corporation, effective September 28, 2011, for a term to expire September 28, 2012.

Appointments for September 7, 2011


Appointed to the Texas Animal Health Commission for a term to expire September 6, 2017, Thomas G. Kezar of Dripping Springs (Mr. Kezar is being reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2017, Ernesto A. Morales of Devine (Mr. Morales is being reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2017, Michael L. Vickers of Falfurrias (Dr. Vickers is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2017, Janie Allen Carpenter of Garland (Dr. Carpenter is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2017, Joe M. King of Dallas (replacing David Heffin of Mission whose term expired).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2017, Chad M. Upham of Boerne (replacing Cynthia Diaz of San Antonio whose term expired).

Appointed to the Texas Commission on the Arts, effective September 9, 2011, for a term to expire August 31, 2013, Marsha Wilson Rappaport of Galveston (replacing Susan Howard-Chrane of Boerne who resigned).

Appointed to the Texas Commission on the Arts, effective September 9, 2011, for a term to expire August 31, 2015, Mila Gibson of Sweetwater (replacing Bob Snead of El Paso who resigned).

Appointed to the Texas Commission on the Arts, effective September 9, 2011, for a term to expire August 31, 2017, Rita E. Baca of El Paso (Ms. Baca is being reappointed).

Appointed to the Texas Commission on the Arts, effective September 9, 2011, for a term to expire August 31, 2017, Andrew P. Barlow of Austin (replacing Polly Sowell of Austin whose term expired).

Appointed to the Texas Commission on the Arts, effective September 9, 2011, for a term to expire August 31, 2017, Patty A. Bryant of Amarillo (Ms. Bryant is being reappointed).

Appointed to the Texas Commission on the Arts, effective September 9, 2011, for a term to expire August 31, 2017, David C. Garza of San Antonio (replacing Billye Shaw of Abilene whose term expired).

Appointments for September 12, 2011

Appointed to the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term to expire September 1, 2013, Eric J. Doyal of Houston.

Appointed to the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term to expire September 1, 2013, Milton B. Lee, II of San Antonio.

Appointed to the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term to expire September 1, 2015, Richard H. Dolgener of Andrews.

Appointed to the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term to expire September 1, 2015, Linda L. Morris of Waco.
Appointed to the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term to expire September 1, 2017, John M. Salsman of College Station.

Appointed to the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term to expire September 1, 2017, Robert C. Wilson of Lockhart.

Designating Robert C. Wilson as presiding officer of the Low-Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1605, 82nd Legislature, Regular Session, for a term at the pleasure of the Governor.

Rick Perry, Governor

TRD-201103699
Requests for Opinions
RQ-0993-GA

Requestor:
The Honorable Ben Woodward
Chair, Court Reporters Certification Board
205 West Fourteenth Street, Suite 101
Austin, Texas 78701

Re: Whether section 52.021(f), Government Code, which requires that all depositions must be recorded by a certified shorthand reporter, has been repealed (RQ-0993-GA)

Briefs requested by October 10, 2011
For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201103777
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: September 14, 2011

Opinions
Opinion No. GA-0883
Mr. Harold E. Feeley, Commissioner
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

Re: Scope of "enlargement of powers" authority granted state-chartered credit unions in section 123.003(a) of the Finance Code (RQ-0942-GA)

SUMMARY
Section 124.002 of the Texas Finance Code specifically limits rates of interest that state-chartered credit unions can charge their members. Accordingly, the general authority granted by section 123.003(a) of the Texas Finance Code does not authorize a state chartered credit union to charge a federally-established rate of interest if the federal rate is higher than the maximum rate established and authorized by section 124.002. As a general proposition, the commissioner or a commission rule may limit credit unions’ financial activities under section 123.003 to the extent that prohibiting those financial activities may be reasonably necessary to exercise the commission’s express authority and the purposes set forth in section 121.0011 of the Finance Code.

The commissioner may enforce a restriction associated with activities authorized by section 123.003 to the extent that it is necessary for the commissioner to supervise and regulate state-chartered credit unions. Although a court could give section 123.003 a more limited reading, this provision of the Finance Code provides that a state-chartered credit union’s authority is determined by reference to federal regulations governing federal credit unions at the time the state-chartered credit union exercises that authority—not federal regulations at the time section 123.003 was enacted.

Opinion No. GA-0884
The Honorable Jack A. McGaughey
97th District Attorney
Post Office Box 55
Montague, Texas 76251-0055
Re: Appointment of counsel in criminal cases for non-indigent defendants (RQ-0962-GA)

SUMMARY

Although a court generally has no duty to appoint counsel to a non-indigent, there may be circumstances in which a court may do so when the interests of justice so require.

A court may require a defendant, in an order of community supervision, to pay attorney fees according to the county’s schedule of fees established under article 26.05, regardless of the county commissioners court’s contract with individual attorneys.

Funds paid under an order of supervision should be deposited as court costs under article 26.05(g), regardless of the amounts agreed to in a contract by the commissioners court and the individual attorneys. TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2010).

Opinion No. GA-0885

The Honorable Rene Guerra
Hidalgo County Criminal District Attorney
Hidalgo County Courthouse
100 North Closner, Room 303
Edinburg, Texas 78539

Re: Process to appoint a person to fill a vacancy or to serve a subsequent term as a member of a board of directors of a regional mobility authority (RQ-0955-GA)

SUMMARY

While courts generally defer to a state agency’s interpretation of its own rules, we do not interpret chapter 370 of the Transportation Code or the Transportation Commission’s rules implementing that chapter to require a county to use the same representation criteria that it used to select a regional mobility authority’s initial directors when the county appoints successor directors. Such a county is not required to seek the Texas Transportation Commission’s approval to establish its process and representation criteria for appointing successor directors.

The process for appointing successor directors and the factors that should be considered to ensure fair representation of political subdivisions in a single-county regional mobility authority is a matter for the commissioners court of the county to determine in the first instance.

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

TRD-201103778
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: September 14, 2011

◆ ◆ ◆
TITLE 1. ADMINISTRATION
PART 4. OFFICE OF THE SECRETARY OF STATE
CHAPTER 81. ELECTIONS
SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

1 TAC §81.172

The Office of the Secretary of State proposes amendments to §81.172, concerning provisional voting procedures for paper ballot elections. These amendments are necessary to comply with changes made to polling place and post-election voter identification requirements by the 82nd Legislature.

The Secretary of State proposes these amendments in anticipation of the January 1, 2012 effective date for implementation of new polling place identification requirements and provisional voting procedures at the county voter registrar’s offices. Senate Bill 14, which enacted the changes, is in the process of being precleared with the U.S. Department of Justice under the federal Voting Rights Act, and the amendments to the rule will not be effective until preclearance is obtained.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McGeehan has determined also that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the change is conformity to existing law. There will be no effect to individuals required to comply with the amendments as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The deadline for furnishing comments is 30 days after publication in the Texas Register.

The amendments are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws and Senate Bill 14, Act of May 18, 2011, 82nd Leg., R.S., Chapter 123, §18.

No other sections are affected by the amendments.


(a) Polling Place Preparation.

(1) The Election Judge shall set aside a sufficient number of regular ballots from the supply of official ballots and write or stamp "provisional" on the back of the ballot (referred to below as "provisional ballots").

(2) The Election Judge shall keep the provisional ballots separate from the regular ballots.

(b) Eligibility to vote provisional ballots.

(1) At all elections, the following individuals shall be eligible to cast a provisional ballot:

(A) A Voter who does not provide a valid form of identification; or

(B) [Δ] A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered voters [and whose registration cannot be determined by the Voter Registrar]; or

(C) A voter whose name on the presented ID document does not match the name as it appears on the list of registered voters, and the election official rejected the voter for that reason; or

[D] A Voter who is designated as a first time Voter on the list of registered voters, but who is unable to produce the required identification; or

(D) [ΔΔ] A Voter who has applied for a ballot by mail, but has not yet [returned the ballot by mail or] cancelled the mail ballot application with the main early voting clerk; or

(E) [ΔΔ] A Voter who votes during the polling hours that are extended by a state or federal court; or

(E) A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.

(F) A Voter who is required to present identification but does not.

(F) [ΔΔ] A Voter who is on the list, but registered residence address is outside the political subdivision; or[-]

(G) [ΔΔ] A Voter who voted in another party’s primary; or[-]

(H) A voter who is eligible to vote under paragraph (2) of this subsection but failed to present a valid form of identification to the election official; or

(I) Voter is a disabled voter exempt from identification requirements under §13.002(1), Texas Election Code, but does not have or otherwise fails to present a registration certificate indicating exemption to polling place election official; or

PROPISOED RULES  September 23, 2011  36 TexReg 6209
(J) Other: __________________ (with an explanation).

(2) A voter is not required to vote provisionally if the voter’s name does not appear on the precinct list but the voter presents a valid form of identification and:

(A) presents a current registration certificate indicating the voter is registered in the precinct; or

(B) presents a current registration certificate indicating the voter is a resident of a precinct other than the one in which the voter is offering to vote and completes an affidavit stating the voter is:

(i) a resident of the precinct in which the voter is offering to vote or otherwise entitled by law to vote in the precinct;

(ii) was a resident of the precinct in which the voter is offering to vote at the time the information on the voter’s residence address was last offered to the voter registrar;

(iii) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(iv) is voting only once in the election.

(3) [2] A person voting by mail may not vote a provisional ballot.

(c) Polling Place Procedures for Hand-Counted Paper Ballot.

(1) If a Voter is eligible to cast a provisional ballot, the Election Judge shall immediately inform the Voter of this right. The Election Judge shall also inform the Voter that their provisional ballot will not be counted if the Voter casts a provisional ballot at a precinct in which the Voter is not registered (regardless of whether the Voter is registered in another precinct but in the same political subdivision) or if there is an indication on the list of registered voters that the Voter has voted early in person or by mail or if the Voter fails to submit a valid form of identification to the voter registrar by the 6th day after the election.

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional ballot, but unless the Voter presents identification to the Voter Registrar as set out in paragraph (16) of this subsection, the ballot will not be accepted for counting [his ballot will not be approved for counting] and the Election Judge must notify the Voter of that fact. [Acceptable forms of identification include:]

[A] a driver’s license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

[B] a form of identification containing the person’s photograph that establishes the person’s identity;

[C] a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person’s identity;

[D] United States citizenship papers issued to the person;

[E] a United States passport issued to the person;

[F] official mail addressed to the person by name from a governmental entity;

[G] a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter or

[H] any other form of identification prescribed by the secretary of state;

(I) Acceptable forms of identification include:

(A) a Texas driver’s license, Texas election identification certificate, Texas personal identification card or Texas concealed handgun license issued by the Texas Department of Public Safety;

(B) a United States military identification card that contains the person’s photograph;

(C) a United States citizenship certificate issued to the person that contains the person’s photograph; or

(D) a United States passport.

(4) Except for the United States citizenship certificate, which does not have an expiration date, the submitted identification must be current and not have expired, or if expired, then it must have expired no more than 60 days before it is presented for voter qualification at the polling place.

(5) [44] Prior to casting a provisional ballot, the Voter shall be required to sign a Provisional Ballot Affidavit Envelope. The Provisional Ballot Affidavit Envelope shall state that the Voter is a registered voter in the political subdivision and a resident on election day and that the Voter is eligible to vote in the election. The Provisional Ballot Affidavit Envelope shall also require the information necessary to register the Voter, if the Voter proves to be unregistered. A Voter who refuses to sign the Provisional Ballot Affidavit Envelope is not eligible to vote provisionally.

(6) [44] The Election Judge shall make clear to the Voter that in order for the provisional ballot to be evaluated by the Early Voting Ballot Board, he must complete and sign the Provisional Ballot Affidavit Envelope.

(7) [45] The Election Judge shall enter the Provisional Voter’s name on the List of Provisional Voter’s form. The List of Provisional Voters form shall contain a box to indicate whether or not the voter submitted a valid form of identification.

(8) [46] The Election Judge shall add the name of the Provisional Voter to the poll list and check the column "Provisional".

(9) [2] The Provisional Voter shall sign the regular signature roster.

(10) The Election Judge shall check yes or no as to whether the voter presented a valid form of identification.

(11) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Lack of valid identification;

(B) Voter not on list of registered voters;

(C) Voter not on precinct list, registered in another precinct;

(D) Voter on list of persons who voted early by mail, and Voter has not cancelled mail ballot application;

(E) Voter who voted after 7:00 p.m. due to court order;

(F) Voter on list, but registered residence address is outside the political subdivision;

(G) Voter who voted in another party’s primary;

(H) Voter is a disabled voter exempt from identification requirements under §13.002(i), Texas Election Code but failed
to present registration certificate indicating exemption to polling place election official; or

(1) Voter was eligible to vote regular ballot under subsection (b)(2) of this section but failed to present valid form of identification to election official.

[(4)] The Election Judge shall check the reason under which the voter voted provisionally on the provisional ballot envelope. The reasons include:

[(A)] Voter not on list of registered voters, Voter Registrar could not be reached;

[(B)] Voter not on list of registered voters and could not be verified by Voter Registrar;

[(C)] Voter on list of registered voters, but did not provide certificate or other form of identification;

[(D)] Voter not on list and no identification;

[(E)] Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk;

[(F)] First time Voter without any identification;

[(G)] Voters who voted after 7:00 p.m. due to court order,

[(H)] Voters who voted in another party’s primary.

[12] [49] The Election Judge shall then sign the provisional ballot envelope.

[13] [410] The Election Judge shall direct the Voter to choose a ballot from a stack of pre-designated "provisional" ballots.

[14] [411] The Election Judge shall inform the Voter that ballots stamped "provisional" will not be counted if placed in the ballot box without sealing it inside the corresponding envelope.

[15] [412] The Election Judge shall inform the Voter that the Voter will receive notice in the mail as to whether or not their ballot was counted and shall immediately provide to the Voter a written notice which will inform the Voter of this fact in writing, along with information that explains that the Provisional Ballot Affidavit Envelope will be used by the Voter Registrar to register the Voter or update his registration, as applicable.

[16] If the voter failed to submit a valid form of identification prior to applying for the provisional ballot, the Election Judge shall provide the voter with a Notice of Provisional Voter/Polling Place ID receipt form. The Notice of Provisional Voter/Polling Place ID receipt form shall contain a list of acceptable forms of voter identification, a description of the procedure for submitting the Notice of Provisional Voter/Polling Place ID receipt form along with a valid form of identification to the voter registrar within 6 days after the date of the election, and a map to the voter registrar’s office as required under §65.0541, Texas Election Code. The Notice of Provisional Voter/Polling Place ID receipt form also shall contain a statement explaining its purpose to the voter to allow the registrar to tie the voter’s presented identification to the voter’s sealed provisional ballot. The election official shall enter on the Notice of Provisional Voter/Polling Place ID form the voter’s name, voter unique identifier (VUID) number (if available), and the precinct polling place at which the provisional ballot was voted. This notice may be combined with the notice required by paragraph (15) of this subsection.

[17] [413] After the provisional ballot has been voted, the Voter shall:

A) seal the provisional ballot in a plain white secrecy envelope,

B) seal the secrecy envelope inside the provisional ballot envelope; and

C) deposit the Provisional Ballot Affidavit Envelope in Ballot Box #1 or a separate container that meets the requirements of Section 51.034 of the Code or has been approved by the Secretary of State.

(d) Early Voting By Personal Appearance Provisional Ballot Procedures.

(1) To the extent practicable, the Early Voting Clerk or Deputy Early Voting Clerk shall follow election day provisional ballot procedures during the early voting period.

(2) The Provisional Voter’s precinct number shall be added to an Early Voting List of Provisional Voters.

(3) The early voting clerk may deliver the provisional ballot envelopes cast during early voting to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

[(2)] When the Early Voting Ballot Board convenes, the early voting ballot board shall separate the provisional ballot envelopes from the regularly cast ballots and place them in a ballot box or transfer case for delivery to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

[(4)] The Voter Registrar shall review the Provisional Ballot Affidavit Envelopes as set out in subsection (g) (ee) of this section.

(e) Provisional Ballot Affidavit Envelope transfer procedures,

(1) The presiding Election Judge shall enter the number of Provisional Ballot Affidavit Envelopes cast on the register of official ballots and on the List of Provisional Voters.

(2) The Election Judge shall separate the Provisional Ballot Affidavit Envelopes from regular ballots during the counting phase, and shall secure the regularly-counted ballots in Ballot Box Number 3 and secure the provisional ballots in Ballot Box Number 4.

(3) The List of Provisional Voters is placed in Envelope Number 2.

(4) On election night, the General Custodian shall open all Envelopes Number 2 and remove the List of Provisional Voters. From these lists, the General Custodian shall prepare a Summary of Provisional Ballots listing each precinct and the number of provisional ballots received by that precinct as indicated on the Register of Official Ballots. The information on the Summary of Provisional Ballots shall be available during election night.

(5) The General Custodian shall unlock Ballot Box Number 4 and remove the Provisional Ballot Affidavit Envelopes.

(6) The General Custodian shall also verify that the number of Provisional Voters on the List of Provisional Voters from each precinct matches the number of provisional ballots recorded on the ballot register from each precinct.

(7) The General Custodian shall sign the List of Provisional Voters evidencing the number of Provisional Voters per precinct and the number of Provisional Ballot Affidavit Envelopes to be forwarded to the Voter Registrar.

(8) Ballots stamped "provisional" but not contained in a provisional ballot envelope may not be counted and are not transferred.
to the Voter Registrar. The presiding Election Judge shall write the reason for not counting the ballot on the back of the ballot. These ballots shall be retained for the appropriate preservation period, and shall also be placed in Ballot Box No. 4.

(9) The General Custodian shall place the voted Provisional Ballot Affidavit Envelopes from all the election day precincts into a ballot box or transfer case with the corresponding List of Provisional Voters for each precinct.

(10) The General Custodian shall give the Voter Registrar a copy of the Summary of Provisional Ballots at the same time the Provisional Ballot Affidavit Envelopes and List of Provisional Voters are delivered to the Voter Registrar.

(11) The General Custodian shall lock and seal each ballot box or transfer case that contains the Provisional Ballot Affidavit Envelopes prior to delivery to the Voter Registrar. The numbers on the seal shall be recorded on the Summary of Provisional Ballots.

(12) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar.

(1) The General Custodian shall deliver the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes along with the Summary of Provisional Ballots and the List of Provisional Voters for each precinct to the Voter Registrar on the next business day after the election.

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian’s office and take possession on election night.

(3) Upon receipt of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes and their keys, the Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers to verify such receipt, that the box was in tact, and that the seal was not broken.

(4) The Voter Registrar shall break the seal and unlock the box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes.[box]

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes once his or her review is completed.

[6] The Voter Registrar must keep the List of Provisional Voters together with the corresponding Provisional Ballot Affidavit Envelopes for that precinct. The Voter Registrar does not complete any information on this form.

(6) If the Early Voting Ballot Board meets prior to election day to prepare ballots for processing in a manner as authorized under Section 82.062 of the Code, the Voter Registrar may attend the meeting and take possession of early voting Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the sixth calendar [third business] day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter’s registration status:

(A) the Department of Public Safety,

(B) Volunteer Deputy Registrars, and

(C) other records that may establish the Voter’s eligibility. [The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter’s registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:]

[iii] No record of voter registration application on file in this county;

[i] Registration cancelled on ______ (fill in date);

[iii] Registered less than 30 days before the election;

[iii] Incomplete registration received, but additional information not returned;

[i] Voter rejected for registration due to ineligibility;

[iii] Registered to vote, but erroneously listed in wrong precinct;

[iii] Registered to vote in a different precinct within the county;

[iii] Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar’s office;

[iii] Voter erroneously removed from list of registered voters;

[iii] Voter is registered;

[iii] Voter voted in another party’s primary, or

[iii] Other: __________________ (with an explanation);

(2) During the six calendar day period after election day, the voter registrar office shall, during regular business hours, remain open and available for provisional voters to present a valid form of identification to the voter registrar under subsection (h) of this section.

(3) The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter’s registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(A) Not a registered voter;

(B) Registered to vote, but erroneously listed in wrong precinct;

(C) Registered to vote in a different precinct within the county;

(D) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar’s office;

36 TexReg 6212  September 23, 2011  Texas Register
(E) Voter erroneously removed from list of registered voters;

(F) Voter with disability exempt from identification requirements under §13.002(i), Texas Election Code failed to present registration certificate indicating exemption to polling place election official and failed to present certificate or other form of identification at voter registrar’s office on or before the 6th day after election day;

(G) Voter cast a provisional ballot at the polling place due to lack of valid identification and prior to the 6th day after election day, voter applied for and received a disability exemption from identification requirements under §13.002(i), Texas Election Code and received documentation evidencing receipt of the exemption;

(H) Voter is registered to vote in precinct ;

(I) Voter voted in another party’s primary;

(J) Voter presented a valid form of identification in person at voter registrar’s office within 6 days of election day;

(K) Voter executed affidavit in person at voter registrar’s office within 6 days of election day stating the voter has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief;

(L) Voter executed affidavit in person at voter registrar’s office within 6 days of election day stating voter does not have any identification meeting the requirements of §6.001(b), Texas Election Code as a result of a national disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the ballot was cast, and caused the destruction or inability to access the voter’s identification; or

(M) Other: ______________________ (with an explanation).

4. [16] The Voter Registrar shall sign and date his review of each Provisional Ballot Affidavit Envelope.

5. [14] The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

6. [14] For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as thirty days from the Election Date at which the Provisional Ballot Affidavit Envelope was submitted.

7. [14] If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar’s jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar’s request.

8. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in secure containers as designated by the General Custodian of election records, along with copies of the List of Provisional Voters, the copy of the Summary of Provisional Ballots, the Notice of Provisional Voter/Polling Place ID receipt forms and Voter Registrar ID Receipt forms. The container must be locked and sealed. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

9. [16] The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar. The Voter Registrar’s designated time of delivery may in no event be later than the time the Early Voting Ballot Board convenes on the 7th day after election day to count provisional ballots per §65.051(a), Texas Election Code.

10. [14] The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board or General Custodian of election records shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

11. The custodian of election records shall review the copies of the List of Provisional Voters submitted by the Voter Registrar to determine whether acceptable forms of identification were submitted either at the polling place or to the voter registrar. Provisional ballots cast due to the failure to submit an acceptable form of identification at the polling place shall be treated in the same manner as ballots by mail not timely returned under §86.011, Texas Election Code if the voter failed to correct the defect with the voter registrar as provided under §65.054 and §65.0541, Texas Election Code.

12. [16] Poll Watchers are not entitled to be present during the Voter Registrar’s review.

(h) Post Election Submission of Identification to Voter Registrar under §65.0241, Texas Election Code.

1. A voter who cast a provisional ballot due to the failure to submit an acceptable form of identification at the polling place may correct the problem by presenting a valid form of identification to the voter registrar, applying for and receiving a disability exemption under §13.002(i), Texas Election Code and receiving documentation evidencing receipt of the exemption; or completing one of the affidavits set out in §65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar not later than the 6th day after the date of the election.

2. The voter registrar’s office shall remain open for voters to submit an acceptable form of identification or otherwise correct the failure to submit identification at the polling place during regular business hours on regular business days.

3. The voter shall submit the Notice of Provisional Voter/Polling Place ID receipt form he or she was given at the polling place to the voter registrar and present a valid form of identification (or one of the appropriate completed affidavits). The voter registrar shall attach the form to the voter’s provisional ballot affidavit envelope.
(4) If the voter does not submit the Notice of Provisional Voter/Polling Place form which he or she was given at the polling place, the voter registrar shall complete a Voter Registrar ID Receipt form with the voter’s name, VUID number (if available), and the precinct at which the voter cast his or her vote and sign the Voter Registrar ID Receipt form.

(5) After the voter submits a valid form of identification, applies for the disability exemption under §13.002(i), Texas Election Code, or submits the appropriate affidavit request to the voter registrar, the voter registrar shall review the identification or exemption request to determine its validity.

(6) On the provisional ballot affidavit envelope, the voter registrar shall mark the voter as having presented identification, or having received the disability exemption under §13.002(i), Texas Election Code with documentation evidencing receipt of the exemption, or completed the appropriate affidavit of religious objection or natural disaster on the Notice of Provisional Voter/Polling Place receipt form or the Voter Registrar ID receipt form, as applicable.

(7) If the voter submitted an application for the disability exemption, the voter registrar shall attach the completed application to the voter’s original voter registration application and issue the voter a new certificate containing the indication required under §15.001(c), Texas Election Code.

(8) The voter registrar shall mark the List of Provisional Voters to indicate whether or not the provisional voter submitted an acceptable form of identification or executed one of the authorized affidavits within the six day period after election day.

(i) [44] Early Voting Ballot Board defined. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire ballot board is not required to be present. A minimum of three members of the board is required to conduct the review.

(ii) [44i] Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Rules for Counting.

1. The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Voter Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge. The time of delivery may in no event be later than the time the Early Voting Ballot Board convenes on the 7th day after election day to count provisional ballots per §65.051(a), Texas Election Code. If a court order which allowed voters to cast ballots after 7:00 p.m. on election night has been vacated, the General Custodian of Election Records shall segregate the ballots cast by voters who appeared at the polling place after 7:00 p.m. on election night and treat them in the same manner as ballots by mail not timely returned under §86.011, Texas Election Code.

2. The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her review.

3. The Early Voting Ballot Board must receive and review the Provisional Ballot Affidavit Envelopes.

4. The Early Voting Ballot Board shall review both the Election Judge’s and the Voter Registrar’s notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted, subject to the requirement that the voter has presented a valid form of identification at the polling place or to the voter registrar’s office, applied for and received a disability exemption under §13.002(i), Texas Election Code and received documentation evidencing receipt of the exemption; or completed one of the affidavits set out in §65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar not later than the 6th day after the date of the election. [as indicated below:]

(A) If the Election Judge indicated that a Voter with a disability exemption to the identification requirements did not submit the certificate at the polling place to the election official and the voter failed to present the certificate or another form of identification to the voter registrar, except for the exception set out in subparagraph (J) of this paragraph, the ballot shall not be counted.

(B) If the Voter Registrar indicates that the Provisional Voter is registered to vote and was erroneously registered in the wrong election precinct, the ballot shall be counted.

(C) If the Voter Registrar indicates that the Provisional Voter was registered to vote and the registration application on file with the county, the provisional ballot shall not be counted.

(D) If the Voter Registrar indicates that the Provisional Voter’s registration has been cancelled and provides the date, the ballot shall not be counted.

(E) If the Voter Registrar indicates that the Provisional Voter’s registration application was rejected due to ineligibility, the ballot shall not be counted.

(F) If the Voter Registrar indicates that the Provisional Voter’s registration application was rejected due to ineligibility but the required additional information was not returned, the ballot shall not be counted.

(G) If the Voter Registrar indicates that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.

(H) If the board determines that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.

(I) If the Election Judge or the Voter Registrar indicates that the voter voted in another party’s primary, the ballot shall not be counted.
(A) The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(B) If the Voter was erroneously removed from list and the Voter is otherwise qualified to vote, the ballot shall be counted.

(E) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(F) If the voter registrar indicates the voter is not registered to vote, the ballot shall not be counted.

(G) The ballot shall be counted if the voter failed to submit identification at the polling place, but the Voter Registrar indicates the voter submitted an affidavit within 6 calendar days after the date of the election asserting the voter:

(i) has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief; or

(ii) does not have any identification meeting the requirements of §63.001(b), Texas Election Code as a result of a natural disaster that was declared by the President of the United States or the governor, occurred not earlier than 45 days before the ballot was cast, and caused the destruction or inability to access the voter’s identification.

(H) The ballot shall be counted if the voter failed to submit identification at the polling place, but the Voter Registrar indicates the voter presented a valid form of identification in person at the registrar’s office within 6 days after the date of the election, and the voter was otherwise eligible to vote in the election.

(I) If the election judge indicates the voter presented a current certificate and initiated the process of voting a regular ballot under subsection (b)(2) of this section but voted provisionally because he or she failed to present a valid form of identification, the ballot shall be not be counted unless the voter appeared with a valid form of identification within 6 calendar days after the date of the election.

(J) The ballot shall be counted if the voter failed to submit identification at the polling place, but applied for and received the disability exemption under §13.002(a), Texas Election Code and received documentation evidencing receipt of the exemption from the voter registrar by the 6th day after election day, and the voter was otherwise eligible to vote in the election.

(5) The presiding judge of the Early Voting Ballot Board shall indicate the disposition of each ballot on the appropriate space of the Provisional Ballot Affidavit Envelope.

(6) The presiding judge of the Early Voting Ballot Board shall indicate the disposition of each Provisional Ballot Affidavit Envelope on the List of Provisional Voters for that precinct. The Notice of Provisional Voter/Polling Place ID receipt form or Voter Registrar ID Receipt form, whichever is applicable, shall be attached to and retained with the voter’s provisional ballot affidavit envelope.

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted under the normal procedure for counting ballots by mail in the election. The presiding judge of the Early Voting Ballot Board shall make a return sheet of the votes and record the votes by precinct.

(8) The Provisional Ballot Affidavit Envelopes for accepted ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked "Accepted" and the Provisional Ballot Affidavit Envelopes and their Provisional Ballots for the rejected ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked "Rejected".

(9) Once counted, the provisional ballots, along with any Notices of Provisional Voter/Polling Place ID receipt or Voter Registrar ID receipt forms, shall be re-locked and returned to the General Custodian of election records. The key shall be delivered to the General Custodian of the key. The records of the ballot board shall be distributed in accordance with Chapter 66 of the Code.

(10) The List of Provisional Voters for each precinct, along with any additional copies of the List forms, shall be delivered to the General Custodian of election records in the Envelope for Accepted Provisional Ballot Affidavit Envelopes.

(11) The General Custodian of election records shall prepare an amended unofficial return once the General Custodian receives the documents contained in Envelope #2.

(12) The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(13) The Lists of Provisional Voters for each precinct shall be retained and used by the General Custodian of election records to provide information to Voters on whether the provisional ballot was counted or not.

(14) All Provisional Ballot Affidavit Envelopes, [and] the List of Provisional Voters, and the Notice of Provisional Voter/Polling Place ID receipt forms and Voter Registrar ID Receipt forms are public records.

(15) Rejected Provisional Ballot Affidavit Envelopes may not be opened except by court order.

(16) Poll Watchers are entitled to be present at the meeting of Early Voting Ballot Board pursuant to §33.054 of the Texas Election Code.

(k) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(l) Notice to Provisional Voters. Not later than the 10th day after the local canvass, the presiding judge of the Early Voting Ballot Board shall deliver written notice regarding whether the provisional ballot was counted, and if the ballot was not counted, the reason the ballot was not counted. The presiding judge shall use the information provided on the Provisional Ballot Affidavit Envelope to obtain the proper mailing address for the Voter and the final resolution of the provisional ballot.

(m) Effective date. The 2011 amendment to this rule will be effective for elections held on or after January 1, 2012.

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 September 12, 2011.

TRD-201103717
John Sepehri
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 463-5650
1 TAC §81.173
The Office of the Secretary of State proposes amendments to §81.173, concerning provisional voting procedures for elections using optical scan precinct ballot counters. These amendments are necessary to comply with changes made to polling place and post-election voter identification requirements by the 82nd Legislature.

The Secretary of State proposes the amendments in anticipation of the January 1, 2012 effective date for implementation of new polling place identification requirements and provisional voting procedures at the county voter registrar's offices. Senate Bill 14, which enacted the changes, is in the process of being precleared with the U.S. Department of Justice under the federal Voting Rights Act, and the amendments to the rule will not be effective until preclearance is obtained.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McGeehan has determined also that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the change is conformity to existing law. There will be no effect to individuals required to comply with the amendments as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The deadline for furnishing comments is 30 days after publication in the Texas Register.

The amendments are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws and Senate Bill 14, Act of May 18, 2011, 82nd Leg., R.S., Chapter 123, §18.

No other sections are affected by the amendments.


(a) Polling Place Preparation.

(1) The Election Judge shall set aside a sufficient number of regular ballots from the supply of official ballots and write or stamp "provisional" on the back of the ballot (referred to below as "provisional ballots").

(2) The Election Judge shall keep the provisional ballots separate from the regular ballots.

(b) Eligibility to vote provisional ballot.

(1) At all elections, the following Voters shall be eligible to cast a provisional ballot:

(A) A Voter who does not provide a valid form of identification; or

(B) [AA] A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered voters [and whose registration cannot be determined by the Voter Registrar]; or

(C) A voter whose name on the presented ID document does not match the name as it appears on the list of registered voters, and the election official rejected the voter for that reason; or

(D) [EE] A Voter who is designated as a first time Voter on the list of registered voters, but who is unable to produce the required identification; or

(E) [DD] A Voter who has applied for a ball by mail, but has not yet [returned the ballot by mail or] cancelled the mail ballot application with the main early voting clerk; or

(F) [GG] A Voter who votes during the polling hours that are extended by a state or federal court; or

(G) [HH] A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.

(H) A Voter who is required to present identification but does not.

(I) [GG] A Voter who is on the list, but registered residence address is outside the political subdivision; or[

(J) [II] A Voter who voted in another party’s primary; or[

(K) A voter who is eligible to vote under paragraph (2) of this subsection but failed to present a valid form of identification to the election official; or

(L) Voter is a disabled voter exempt from identification requirements under §13.002(t), Texas Election Code but does not have or otherwise fails to present a registration certificate indicating exemption to polling place election official; or

(M) Other: [N] (with an explanation).

(2) A voter is not required to vote provisionally if the voter’s name does not appear on the precinct list but the voter presents a valid form of identification and:

(A) presents a current registration certificate indicating the voter is registered in the precinct; or

(B) presents a current registration certificate indicating the voter is a resident of a precinct other than the one in which the voter is offering to vote and completes an affidavit stating the voter is:

(i) a resident of the precinct in which the voter is offering to vote or otherwise entitled by law to vote in the precinct;

(ii) was a resident of the precinct in which the voter is offering to vote at the time the information on the voter’s residence address was last offered to the voter registrar;

(iii) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(iv) is voting only once in the election.

(3) [AA] A person voting by mail may not vote a provisional ballot.

(c) Polling Place Procedures for Polling Places using Precinct Ballot Counters.

(1) If a Voter is eligible to cast a provisional ballot, the Election Judge shall immediately inform the Voter of this right. The Election Judge shall also inform the Voter that his or her provisional ballot will not be counted if the Voter casts a provisional ballot at a precinct in which the Voter is not registered (regardless of whether the Voter is registered in another precinct but in the same political subdi-
vision) [see] if there is an indication on the list of registered Voters that the Voter has voted early in person or by mail, or if the voter fails to submit a valid form of identification to the voter registrar by the 6th day after the election.

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional ballot, but unless the voter presents identification to the Voter Registrar as set out in paragraph (16) of this subsection, the ballot will not be accepted for counting [his ballot will not be approved for counting] and the Election Judge must notify the Voter of that fact. [Acceptable forms of identification include:]

(A) a driver’s license or personal identification card issued to the person by the Department of Public Safety; or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(B) a form of identification containing the person’s photograph that establishes the person’s identity;

(C) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person’s identity;

(D) United States citizenship papers issued to the person;

(E) a United States passport issued to the person;

(F) official mail addressed to the person by name from a governmental entity;

(G) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter; or

(H) any other form of identification prescribed by the secretary of state.

(3) Acceptable forms of identification include:

(A) a Texas driver’s license, Texas election identification certificate, Texas personal identification card or Texas concealed handgun license issued by the Texas Department of Public Safety;

(B) a United States military identification card that contains the person’s photograph;

(C) a United States citizenship certificate issued to the person that contains the person’s photograph; or

(D) a United States passport.

(4) Except for the United States citizenship certificate, which does not have an expiration date, the submitted identification must be current and not have expired, or if expired, then it must have expired no more than 60 days before it is presented for voter qualification at the polling place.

(5) [34] Prior to casting a provisional ballot, the Voter shall be required to sign a Provisional Ballot Affidavit Envelope. The Provisional Ballot Affidavit Envelope shall state that the Voter is a registered Voter in the political subdivision and a resident on election day and that the Voter [he] is eligible to vote in the election. The Provisional Ballot Affidavit Envelope shall also require the information necessary to register the Voter, if the Voter [he] proves to be unregistered. A Voter who refuses to sign the Provisional Ballot Affidavit Envelope is not eligible to vote provisionally.

(6) [34] The Election Judge shall make clear to the Voter that in order for the provisional ballot to be evaluated by the Early Voting Ballot Board, he must complete and sign the Provisional Ballot Affidavit Envelope.

(7) [33] The Election Judge shall enter the Provisional Voter’s name on the List of Provisional Voter’s form. The List of Provisional Voters form shall contain a box to indicate whether or not the voter submitted a valid form of identification.

(8) [36] The Election Judge shall add the name of the Provisional Voter to the poll list and check the column “Provisional”.

(9) [32] The Provisional Voter shall sign [signs] the regular signature roster.

(10) The Election Judge shall check yes or no as to whether the voter presented a valid form of identification.

(11) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Lack of valid identification;

(B) Voter not on list of registered voters;

(C) Voter not on precinct list, registered in another precinct;

(D) Voter on list of persons who voted early by mail, and Voter has not cancelled mail ballot application;

(E) Voter who voted after 7:00 p.m. due to court order;

(F) Voter on list, but registered residence address is outside the political subdivision;

(G) Voter who voted in another party’s primary;

(H) Voter is a disabled voter exempt from identification requirements under §13.002(i), Texas Election Code but failed to present registration certificate indicating exemption to polling place election official; or

(I) Voter was eligible to vote regular ballot under subsection (b)(2) of this section but failed to present valid form of identification to election official.

(12) [38] The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Voter not on list of registered voters, Voter Registrar could not be reached;

(B) Voter not on list of registered voters and could not be verified by Voter Registrar;

(C) Voter on list of registered voters, but did not provide certificate or other form of identification;

(D) Voter not on list and no identification;

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk;

(F) First time Voter without any identification;

(G) Voter who voted after 7:00 p.m. due to court order; or

(H) Voter who voted in another party’s primary.}
(13) [449] The Election Judge shall direct the Voter to choose a ballot from a stack of pre-designated "provisional" ballots.

(14) [444] The Election Judge shall inform the Voter that ballots stamped "provisional" will not be counted if placed in the ballot box without sealing it inside the corresponding envelope.

(15) [442] The Election Judge shall inform the Voter that the Voter will receive notice in the mail as to whether or not their ballot was counted and shall immediately provide to the Voter a written notice which will inform the Voter of this fact in writing, along with information that explains that the Provisional Ballot Affidavit Envelope will be used by the Voter Registrar to register the Voter or update his registration, as applicable.

(16) If the voter failed to submit a valid form of identification prior to applying for the provisional ballot, the Election Judge shall provide the voter with a Notice of Provisional Voter/Polling Place ID receipt form. The Notice of Provisional Voter/Polling Place ID receipt form shall contain a list of acceptable forms of voter identification, a description of the procedure for submitting the Notice of Provisional Voter/Polling Place ID receipt form along with a valid form of identification to the voter registrar within 6 days after the date of the election, and a map to the voter registrar’s office as required under §65.0541, Texas Election Code. The Notice of Provisional Voter/Polling Place ID receipt form also shall contain a statement explaining its purpose to the voter to allow the registrar to tie the voter’s presented identification to the voter’s sealed provisional ballot. The election official shall enter on the Notice of Provisional Voter/Polling Place ID form the voter’s name, voter unique identifier (VUID) number (if available), and the precinct polling place at which the provisional ballot was cast. This notice may be combined with the notice required by paragraph (15) of this subsection.

(17) [443] After the provisional ballot has been voted, the Voter shall:

(A) seal the provisional ballot in a plain white secrecy envelope;

(B) seal the secrecy envelope inside the provisional ballot envelope; and

(C) deposit the Provisional Ballot Affidavit Envelope in the Ballot Box #1 or a separate container that meets the requirements of [Section] §51.034 of the Code or has been approved by the Secretary of State.

(d) Early Voting by Personal Appearance Provisional Ballot Procedures.

(1) To the extent practicable, the Early Voting Clerk or Deputy Early Voting Clerk shall follow election day provisional ballot procedures during the early voting period.

(2) The Provisional Voter’s precinct number shall be added to an Early Voting List of Provisional Voters.

(3) The early voting clerk may deliver the provisional ballot envelopes cast during early voting to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(e) The preceding judge shall direct the provisional ballot envelopes to be separated from the regularly cast ballots and placed in a ballot box or transfer case for delivery to the General Custodian of election records. The General Custodian shall deliver the provisional ballots to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) The Voter Registrar shall review the Provisional Ballot Affidavit Envelopes as set out in subsection (g) [443] of this section.

(e) Provisional Ballot Affidavit Envelope Transfer Procedures.

(1) After the election day polls have closed, the Election Judge shall enter the number of Provisional Ballot Affidavit Envelopes cast on the register of official ballots and on the List of Provisional Voters.

(2) The Election Judge shall place a copy of the List of Provisional Voters form inside Envelope Number 2.

(3) The ballot box (or other secure container) containing ballots cast on the tabulator and the separate ballot box (or other secure container) containing Provisional Ballot Affidavit Envelopes shall be delivered to the General Custodian of election records or central counting personnel, if applicable under §127.157 of the Texas Election Code.

(4) After the polls have closed and the ballots cast on the precinct tabulator have been reviewed, if ballots stamped "provisional" but not contained in a Provisional Ballot Affidavit Envelope are discovered, such ballots may not be counted and are not transferred to the Voter Registrar. The ballots shall be treated as irregularly marked ballots under [Section] §127.157 of the Code.

(5) The voted Provisional Ballot Affidavit Envelopes shall be placed into a ballot box or transfer case and locked with a copy of the List(s) of Provisional Voters.

(6) The General Custodian of election records or central counting station personnel, if applicable under §127.157 of the Texas Election Code, shall verify that the number of Provisional Voters on the List of Provisional Voters matches the number of Provisional Ballot Affidavit Envelopes recorded on the ballot register. The General Custodian shall also sign the List of Provisional Voters evidencing the number of Provisional Voters per precinct and the number of Provisional Ballot Affidavit Envelopes to be forwarded to the Voter Registrar.

(7) The General Custodian shall also prepare a Summary of Provisional Ballots listing each precinct and the number of Provisional Ballot Affidavit Envelopes received by that precinct.

(8) The General Custodian shall give the Voter Registrar a copy of the Summary of Provisional Ballots at the same time the Provisional Ballot Affidavit Envelopes and List of Provisional Voters are delivered to the Voter Registrar.

(9) The General Custodian shall lock and seal each ballot box or transfer case that contains Provisional Ballot Affidavit Envelopes prior to delivery to the Voter Registrar. The numbers on the seal shall be recorded on the Summary of Provisional Ballots.

(10) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar.

(1) The General Custodian shall deliver the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes along with the Summary of Provisional Ballots and the List of Provisional Voters for each precinct to the Voter Registrar on the next business day after the election.

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later...
than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian’s office and take possession on election night.

(3) Upon receipt of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes and their keys, the Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers to verify such receipt, that the box was intact, and that the seal was not broken.

(4) The Voter Registrar shall break the seal and unlock the box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes [box].

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the provisional ballots once his or her review is completed.

[66] The Voter Registrar must keep the List of Provisional Voters together with the corresponding Provisional Ballot Affidavit Envelopes for that precinct. The Voter Registrar does not complete any information on this form]

(6) [74] If the Early Voting Ballot Board meets prior to election day to prepare ballots for counting in a manner [as] authorized under [Section 87.101 of] the Code, the Voter Registrar may attend the meeting and take possession of early voting Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the sixth calendar [third business] day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter’s registration status:

(A) the Department of Public Safety,
(B) Volunteer Deputy Registrars, and
(C) other records that may establish the Voter’s eligibility. [The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter’s registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:]

[[(i)] No record of voter registration application on file in this county;]

[[(ii)] Registration cancelled on ________ (fill in date);]

[[(iii)] Registered less than 30 days before the election;]

[[(iv)] Incomplete registration received, but additional information not returned;]

[[(v)] Voter rejected for registration due to ineligibility;]

[[(vi)] Registered to vote, but erroneously listed in wrong precinct;]

[[(vii)] Registered to vote in a different precinct within the county;]

[[(viii)] Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar’s office; and/or]

[[(ix)] Voter erroneously removed from list of registered voters;]

[[(x)] Voter is registered;]

[[(xi)] Voter voted in another party’s primary; or]

[[(xii)] Other: ________________ (with explanation).]

(3) The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter’s registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(A) Not a registered voter;
(B) Registered to vote, but erroneously listed in wrong precinct;
(C) Registered to vote in a different precinct within the county;
(D) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar’s office;

(E) Voter erroneously removed from list of registered voters;
(F) Voter with disability exempt from identification requirements under §13.002(i), Texas Election Code failed to present registration certificate indicating exemption to polling place election official and failed to present certificate or other form of identification at voter registrar’s office on or before the 6th day after election day;

(G) Voter cast a provisional ballot at the polling place due to lack of valid identification and prior to the 6th day after election day, voter applied for and received a disability exemption from identification requirements under §13.002(i), Texas Election Code and received documentation evidencing receipt of the exemption;

(H) Voter is registered to vote in precinct ________;

(I) Voter voted in another party’s primary;

(J) Voter presented a valid form of identification in person at voter registrar’s office within 6 days of election day;

(K) Voter executed affidavit in person at voter registrar’s office within 6 days of election day stating the voter has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief;

(L) Voter executed affidavit in person at voter registrar’s office within 6 days of election day stating voter does not have any identification meeting the requirements of §63.001(b), Texas Election Code as a result of a national disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the ballot was cast, and caused the destruction or inability to access the voter’s identification; or

(M) Other: ________________ (with explanation).

(4) [(23)] The Voter Registrar shall sign and date his review of each Provisional Ballot Affidavit Envelope.
The Provisional Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Provisional Registrar deems necessary.

For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as of the Election Date for which the Provisional Ballot Affidavit Envelope was submitted.

If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar’s jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar’s request.

The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in secure containers as designated by the General Custodian of election records, along with copies of the List of Provisional Voters, the copy of the Summary of Provisional Ballots, the Notice of Provisional Voter/Polling Place ID receipt forms and Voter Registrar ID Receipt forms. The container must be locked and sealed. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

The Voter Registrar shall keep the Provisional Ballot Affidavit Envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in secure containers as designated by the General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relabeled and sealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

The General Custodian of the election records or the Early Voting Board Judge shall pick up the sealed ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar. The Voter Registrar’s designated time of delivery may include no event be later than the time the Early Voting Board convenes on the 7th day after election day to count provisional ballots per §65.051(a), Texas Election Code.

The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

The custodian of election records shall review the copies of the List of Provisional Voters submitted by the Voter Registrar to determine whether acceptable forms of identification were submitted either at the polling place or to the voter registrar. Provisional ballots cast due to the failure to submit an acceptable form of identification at the polling place shall be treated in the same manner as ballots by mail not timely returned under §86.011, Texas Election Code if the voter failed to correct the defect with the voter registrar as provided under §65.054 and §65.0541, Texas Election Code.
(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge. The time of delivery may in no event be later than the time the Early Voting Ballot Board convenes on the 7th day after election day to count provisional ballots per §65.051(a), Texas Election Code. If a court order which allowed voters to cast ballots after 7:00 p.m. on election night has been vacated, the General Custodian of Election Records shall segregate the ballots cast by voters who appeared at the polling place after 7:00 p.m. on election night and treat them in the same manner as ballots by mail not timely returned under §86.011, Texas Election Code.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her review.

(3) The Early Voting Ballot Board must receive and review the Provisional Ballot Affidavit Envelopes.

(4) The Early Voting Ballot Board shall review both the Election Judge’s and the Voter Registrar’s notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted, subject to the requirement that the voter has presented a valid form of identification at the polling place or to the voter registrar, applied for and received a disability exemption under §13.002(i), Texas Election Code and received documentation evidencing receipt of the exemption, or completed one of the affidavits set out in §65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar not later than the 6th day after the date of the election. [as indicated below]

(A) If the Election Judge indicated that a Voter with a disability exemption to the identification requirements did not submit the certificate at the polling place to the election official and the voter failed to present the certificate or another form of identification to the voter registrar, except for the exception set out in subparagraph (J) of this paragraph, the ballot shall not be counted.

[(A)] If the Voter Registrar indicates that the Provisional Voter is registered to vote and was erroneously registered in the wrong election precinct, the ballot shall be counted.

[(B)] The ballot shall be counted if the Voter Registrar determines that the Provisional Voter is eligible and submitted a timely voter registration application, but was not timely received by the Voter Registrar.

[(C)] If the Election Judge indicated that the voter did not provide a valid registration certificate or other form of identification, the ballot shall not be counted.

[(B)] If the Election Judge indicated that the reason for casting a provisional ballot was that the Voter appeared on the list of registered voters as having cast a ballot by mail and the Voter claimed that he never received the mail ballot and is not willing to cancel his or her mail ballot application with the main Early Voting Clerk, the provisional ballot shall not be counted.

[(E)] If the Voter Registrar indicates that there is no record of the Provisional Voter’s registration application on file with the county, the provisional ballot shall not be counted.

[(F)] If the Voter Registrar indicates that the Provisional Voter’s registration has been cancelled and provides the date, the ballot shall not be counted.

[(G)] If the Voter Registrar indicates that the Provisional Voter was registered less than 30 days before Election Day and therefore did not have effective registration for the precinct at which he attempted to vote, the ballot shall not be counted.

[(H)] If the Voter Registrar indicates that an incomplete application was received from the Provisional Voter but the required additional information was not returned, the ballot shall not be counted.

[(I)] If the Voter Registrar indicates that the Provisional Voter’s registration application was rejected due to ineligibility, the ballot shall not be counted.

[(J)] If the Voter Registrar indicates that the Provisional Voter is registered to vote at a different precinct other than the one the Voter voted in, the ballot shall not be counted.

[(K)] If the board determines that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.

[(L)] The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

[(M)] If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.

[(N)] If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

[(O)] If the Voter registrar indicates the voter is not registered to vote, the ballot shall not be counted.

[(P)] The ballot shall be counted if the voter failed to submit identification at the polling place, but the Voter Registrar indicates the voter submitted an affidavit within 6 calendar days after the date of the election asserting the voter;

[(i)] has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief, or

[(ii)] does not have any identification meeting the requirement of §63.001(b), Texas Election Code as a result of a national disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the ballot was cast, and caused the destruction or inability to access the voter’s identification.

[(Q)] The ballot shall be counted if the voter failed to submit identification at the polling place, but the Voter Registrar indicates the voter presented a valid form of identification in person at the registrar’s office within 6 days after the date of the election, and the voter was otherwise eligible to vote in the election.

[(R)] If the election judge indicates the voter presented a current certificate and initiated the process of voting a regular ballot under subsection (b)(2) of this section but voted provisionally because he or she failed to present a valid form of identification, the ballot shall be not be counted unless the voter appeared with a valid form of identification within 6 calendar days after the date of the election.
(J) The ballot shall be counted if the voter failed to submit identification at the polling place, but applied for and received the disability exemption under §15.002(i), Texas Election Code and received documentation evidencing receipt of the exemption from the voter registrar by the 6th day after election day, and the voter was otherwise eligible to vote in the election.

(5) The presiding judge of the Early Voting Ballot Board shall indicate the disposition of each ballot on the Provisional Ballot Affidavit Envelope.

(6) The presiding judge of the Early Voting Ballot Board shall indicate the disposition of each ballot on the appropriate space of the List of Provisional Voters for that precinct. The Notice of Provisional Voter/Polling Place ID receipt form or Voter Registrar ID Receipt form, whichever is applicable, shall be attached to and retained with the voter’s provisional ballot affidavit envelope.

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted under the normal procedure for counting ballots by mail in the election, unless the manager of the central counting station decides that the ballot board shall count the ballots manually and add the totals to the computer count for a canvass total. See paragraph (9) of this subsection for electronic procedures, if the manager decides to count ballots in regular manner. If counted by hand, the ballots are tallied by precinct in the regular manner. The board prepares the returns and submits the returns to the General Custodian of election records.

(8) The Provisional Ballot Affidavit Envelopes for accepted ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked "Accepted" and the Provisional Ballot Affidavit Envelopes and their Provisional Ballots for the rejected ballots shall be placed in an Envelope for Provisional Ballot Envelopes marked "Rejected".

(9) If the provisional ballots are to be counted electronically:

(A) The manager of the central counting station shall decide whether the ballot board shall manually count the ballots and be manually added to the computer count for a canvass total or whether the central counting station shall reconvene.

(B) The manager shall send notice to the presiding judge of the ballot board prior to reconvening the board as to whether the ballots are to be counted manually by the board or whether the ballots are merely to be prepared for delivery to the central counting station.

(C) The manager must order a second test to be conducted prior to the count. The test must be successful.

(D) After the second successful test is conducted, the unofficial election results, preserved by electronic means, shall be loaded in the tabulating equipment.

(E) Once the ballots have been counted, results shall be prepared in the regular manner. The manager shall prepare a certification and attach it to the returns, then place the certification and returns in envelope #1 to be delivered to the presiding officer of the canvassing board indicating that the result supersedes any returns printed prior to the reconvening of the central counting station after election day.

(F) After the results have been prepared, a successful third test must be performed.

(G) The results, ballots, and distribution of ballots and all records shall be made in the regular manner.

(10) Once counted, the Provisional Ballot Affidavit Envelopes, along with any Notices of Provisional Voter/Polling Place ID receipt or Voter Registrar ID receipt forms, shall be re-locked in the container and returned to the General Custodian of election records. The key shall be delivered to the General Custodian of the key.

(11) The List of Provisional Voters for each precinct, along with any copies of the List forms, shall be delivered to the General Custodian of election records in the Envelope for Accepted Provisional Ballot Affidavit Envelopes.

(12) The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(13) The Lists of Provisional Voters for each precinct shall be retained and used by the General Custodian of election records to provide information to Voters on whether the provisional ballot was counted or not.

(14) All Provisional Ballot Affidavit Envelopes, the List of Provisional Voters, and the Notice of Provisional Voter/Polling Place ID receipt forms and Voter Registrar ID Receipt forms are public records.

(15) Rejected Provisional Ballot Affidavit Envelopes may not be opened except by court order.

(16) Poll Watchers are entitled to be present at the meeting of Early Voting Ballot Board pursuant to §33.054 of the Texas Election Code.

(k) [44] Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(l) [44] Notice to Provisional Voters. Not later than the 10th day after the local canvass, the presiding judge of the Early Voting Ballot Board shall deliver written notice regarding whether the provisional ballot was counted, and if the ballot was not counted, the reason the ballot was not counted. The presiding judge shall use the information provided on the Provisional Ballot Affidavit Envelope to obtain the proper mailing address for the Voter and the final resolution of the provisional ballot.

(m) Effective date. The 2011 amendment to this rule will be effective for elections held on or after January 1, 2012.

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 September 12, 2011.

TRD-201103718
John Sepehri
General Counsel
Office of the Secretary of State

Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 463-5650

1 TAC §81.174

The Office of the Secretary of State proposes amendments to §81.174, concerning provisional voting procedures for elections in which ballots are tabulated at a central counting station. These
amendments are necessary to comply with changes made to polling place and post-election voter identification requirements by the 82nd Legislature.

The Secretary of State proposes these amendments in anticipation of the January 1, 2012 effective date for implementation of new polling place identification requirements and curing procedures at the county voter registrar’s offices. Senate Bill 14, which enacted the changes is in the process of being precleared with the Department of Justice under the Voting Rights Act.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McGeehan has determined also that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the change is conformity to existing law. There will be no effect to individuals required to comply with the amendments as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The deadline for furnishing comments is 30 days after publication in the Texas Register.

The amendments are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

No other sections are affected by the amendments.

§81.174. Provisional Voting Procedures for Optical Scan Voting System Ballots Tabulated at a Central Counting Station.

(a) Polling Place Preparation.  
(1) The Election Judge shall set aside a sufficient number of regular ballots from the supply of official ballots and write or stamp "provisional" on the back of the ballot (referred to below as "provisional ballots").

(2) The Election Judge shall keep the provisional ballots separate from the regular ballots.

(b) Eligibility to vote provisional ballot.  
(1) At all elections, the following individuals shall be eligible to cast a provisional ballot:

[A] A Voter who does not provide a valid form of identification; or

[B] A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered voters [and whose registration cannot be determined by the Voter Registrar]; or

[C] A voter whose name on the presented ID document does not match the name as it appears on the list of registered voters, and the election official rejected the voter for that reason; or

[D] A Voter who has applied for a ballot by mail, but has not yet [returned the ballot by mail or] cancelled the mail ballot application with the mail early voting clerk; or

[E] A Voter who votes during the polling hours that are extended by a state or federal court; or

[F] A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.

[G] A Voter who is required to present identification but does not.

[H] A Voter who is on the list, but registered residence address is outside the political subdivision; or

[I] A Voter who voted in another party’s primary; or

[J] A Voter who is a disabled voter exempt from identification requirements under §13.002(ii), Texas Election Code but does not have or otherwise fails to present a registration certificate indicating exemption to polling place election official; or

[K] Other: ___________________ (with an explanation).

(2) A voter is not required to vote provisionally if the voter’s name does not appear on the precinct list but the voter presents a valid form of identification and:

[A] presents a current registration certificate indicating the voter is registered in the precinct; or

[B] presents a current registration certificate indicating the voter is a resident of a precinct other than the one in which the voter is offering to vote and completes an affidavit stating the voter is:

[i] a resident of the precinct in which the voter is offering to vote or otherwise entitled by law to vote in the precinct;

[ii] was a resident of the precinct in which the voter is offering to vote at the time the information on the voter’s residence address was last offered to the voter registrar;

[iii] did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

[iv] is voting only once in the election.

[C] A person voting by mail may not vote a provisional ballot.

(c) Polling Place Procedures for Optical Scan Ballot counted at Central Counting Station.

(1) If a Voter is eligible to cast a provisional ballot, the Election Judge shall immediately inform the Voter of this right. The Election Judge shall also inform the Voter that his or her provisional ballot will not be counted if the Voter casts a provisional ballot at a precinct in which the Voter is not registered (regardless of whether the Voter is registered in another precinct but in the same political subdivision) [or] if there is an indication on the list of registered Voters that the Voter has voted early in person or by mail, or if the voter fails to submit a valid form of identification to the voter registrar by the 6th day after the election.

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional
ballot, but unless the voter presents identification to the Voter Registrar as set out in paragraph (16) of this subsection, the ballot will not be accepted for counting [his ballot will not be approved for counting] and the Election Judge must notify the Voter of that fact. [Acceptable forms of identification include:

(A) a driver’s license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(B) a form of identification containing the person’s photograph that establishes the person’s identity;

(C) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person’s identity;

(D) United States citizenship papers issued to the person;

(E) a United States passport issued to the person;

(F) official mail addressed to the person by name from a governmental entity;

(G) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter; or

(H) any other form of identification prescribed by the secretary of state.]

(3) Acceptable forms of identification include:

(A) a Texas driver’s license, Texas election identification certificate, Texas personal identification card or Texas concealed handgun license issued by the Texas Department of Public Safety;

(B) a United States military identification card that contains the person’s photograph;

(C) a United States citizenship certificate issued to the person that contains the person’s photograph; or

(D) a United States Passport.

(4) Except for the United States citizenship certificate, which does not have an expiration date, the submitted identification must be current and not have expired, or if expired, then it must have expired no more than 60 days before it is presented for voter qualification at the polling place.

(5) Prior to casting a provisional ballot, the Voter shall be required to sign a Provisional Ballot Affidavit Envelope. The Provisional Ballot Affidavit Envelope shall state that the Voter is a registered voter in the political subdivision and a resident on election day and that the Voter is eligible to vote in the election. The Provisional Ballot Affidavit Envelope shall also require the information necessary to register the Voter, if the Voter proves to be unregistered. A Voter who refuses to sign the Provisional Ballot Affidavit Envelope is not eligible to vote provisionally.

(6) The Election Judge shall make clear to the Voter that in order for the provisional ballot to be evaluated by the Early Voting Ballot Board, he must complete and sign the Provisional Ballot Affidavit Envelope.

(7) The Election Judge shall enter the Provisional Voter’s name on the List of Provisional Voter’s form. The List of Provisional Voters form shall contain a box to indicate whether or not the voter submitted a valid form of identification.

(8) The Election Judge shall add the name of the Provisional Voter to the poll list and check the column “Provisional”.

(9) The Provisional Voter shall sign [signs] the regular signature roster.

(10) The Election Judge shall check yes or no as to whether the voter presented a valid form of identification.

(11) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Lack of valid identification;

(B) [CA] Voter not on list of registered voters[, Voter Registrar could not be reached];

(C) Voter not on precinct list, registered in another precinct;

(D) Voter on list of persons who voted early by mail, and Voter has not cancelled mail ballot application;

(E) Voter not on list of registered voters and could not be verified by Voter Registrar;

(F) Voter on list of registered voters, but did not provide certificate or other form of identification;

(G) Voter not on list and no identification;

(H) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk;

(I) First time Voter without any identification;

(J) [GA] Voter voted after 7:00 p.m. due to court order;

(K) Voter on list, but registered residence address is outside the political subdivision;

(L) Voter voted in another party’s primary;

(M) Voter is a disabled voter exempt from identification requirements under §13.002(1), Texas Election Code but failed to present registration certificate indicating exemption to polling place election official;

(N) Voter was eligible to vote regular ballot under subsection (b)(2) of this section but failed to present valid form of identification to election official.

(12) The Election Judge shall then sign the provisional ballot envelope.

(13) The Election Judge shall direct the Voter to choose a ballot from a stack of pre-designated “provisional” ballots.

(14) The Election Judge shall inform the Voter that ballots stamped “provisional” will not be counted if placed in the ballot box without sealing it inside the corresponding envelope.

(15) The Election Judge shall inform the Voter that the Voter will receive notice in the mail as to whether or not their ballot was counted and shall immediately provide the Voter a written notice which will inform the Voter of this fact in writing, along with information that explains that the Provisional Ballot Affidavit Envelope will be used by the Voter Registrar to register the Voter or update his registration, as applicable.

(16) If the voter failed to submit a valid form of identification prior to applying for the provisional ballot, the Election Judge shall
provide the voter with a Notice of Provisional Voter/Polling Place ID receipt form. The Notice of Provisional Voter/Polling Place ID receipt form shall contain a list of acceptable forms of voter identification, a description of the procedure for submitting the Notice of Provisional Voter/Polling Place ID receipt form along with a valid form of identification to the voter registrar within 6 days after the date of the election, and a map to the voter registrar’s office as required under §65.0541, Texas Election Code. The Notice of Provisional Voter/Polling Place ID receipt form also shall contain a statement explaining its purpose to the voter to allow the registrar to tie the voter’s presented identification to the voter’s sealed provisional ballot. The election official shall enter on the Notice of Provisional Voter/Polling Place ID form the voter’s name, voter unique identifier (VUID) number (if available), and the precinct polling place at which the provisional ballot was voted. This notice may be combined with the notice required by paragraph (13) of this subsection.

(17) [434] After the provisional ballot has been voted, the Voter shall:

(A) seal the provisional ballot in a plain white secrecy envelope;

(B) seal the secrecy envelope inside the provisional ballot envelope; and

(C) deposit the Provisional Ballot Affidavit Envelope in Ballot Box #1 or a separate container that meets the requirements of [Section] §51.034 of the Code or has been approved by the Secretary of State.

(d) Early Voting By Personal Appearance Provisional Ballot Procedures.

(1) To the extent practicable, the Early Voting Clerk or Deputy Early Voting Clerk shall follow election day provisional ballot procedures during the early voting period.

(2) The Provisional Voter’s precinct number shall be added to an Early Voting List of Provisional Voters.

(3) The early voting clerk may deliver the provisional ballot envelopes cast during early voting to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(18) The central counting station manager shall direct the provisional ballot envelopes to be separated from the regularly cast ballots and placed in a ballot box or transfer case for delivery to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) The Voter Registrar shall review the Provisional Ballot Affidavit Envelopes as set out in subsection (e) of this section.

(e) Provisional Ballot Affidavit Envelope transfer procedures.

(1) The presiding Election Judge shall enter the number of Provisional Ballot Affidavit Envelopes cast on the register of official ballots and on the List of Provisional Voters.

(2) The Election Judge shall place a copy of the List of Provisional Voters form in Envelope Number 2.

(3) The ballot box(es) shall be delivered to the central counting station after the polls close.

(4) Upon opening the ballot box(es) at the central counting station, counting station personnel shall separate the regularly cast ballots from the Provisional Ballot Affidavit Envelopes.

(5) Ballots stamped “provisional” but not contained in a Provisional Ballot Affidavit Envelope may not be counted and are not transferred to the Voter Registrar. The presiding Election Judge shall write the reason for not counting the ballot on the back of the ballot. These ballots shall be retained for the appropriate preservation period, and shall be placed in Ballot Box No. 4.

(6) The central counting station personnel shall also verify that the number of Provisional Voters on the List of Provisional Voters from each precinct matches the number of Provisional Ballot Affidavit Envelopes recorded on the ballot register from each precinct. If there is no match, the central counting station personnel shall note this fact on both documents.

(7) The central counting station personnel shall place the voted Provisional Ballot Affidavit Envelopes from all of the election day precincts into a ballot box or transfer case with the corresponding List of Provisional Voters for each precinct.

(8) The central counting station personnel shall sign the List of Provisional Voters evidencing the number of Provisional Voters per precinct and the number of Provisional Ballot Affidavit Envelopes to be forwarded to the Voter Registrar.

(9) The central counting station personnel shall prepare a Summary of Provisional Ballots listing each precinct and the number of Provisional Ballot Affidavit Envelopes received from that precinct.

(10) The central counting station personnel (or General Custodian after election night) shall give the Voter Registrar a copy of the Summary of Provisional Ballots at the same time the Provisional Ballot Affidavit Envelopes are delivered to the Voter Registrar.

(11) The General Custodian shall lock and seal each ballot box or transfer case that contains Provisional Ballot Affidavit Envelopes prior to delivery to the Voter Registrar. The numbers on the seal shall be recorded on the Summary of Provisional Ballots.

(12) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar.

(1) The General Custodian shall deliver the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes along with the Summary of Provisional Ballots and the List of Provisional Voters for each precinct to the Voter Registrar on the next business day after the election.

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian’s office and take possession on election night.

(3) Upon receipt of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes and their keys, the Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers to verify such receipt, that the box was in tact, and that the seal was not broken.

(4) The Voter Registrar shall break the seal and unlock the box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes [box].

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot

PROPOSED RULES    September 23, 2011    36 TexReg 6225
box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes once his or her review is completed.

(6) The Voter Registrar must keep the List of Provisional Voters together with the corresponding Provisional Ballot Affidavit Envelopes for that precinct. The Voter Registrar does not complete any information on this form.

(7) If the Early Voting Ballot Board meets prior to election day to prepare ballots for processing in a manner authorized under [Chapter 87, Subchapter B of] the Code, the Voter Registrar may attend the meeting and take possession of early voting Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the sixth calendar day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter’s status:

(A) the Department of Public Safety; [s]

(B) Volunteer Deputy Registrars; [s]

(C) other records that may establish the Voter’s eligibility. [The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter’s registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:]

(i) No record of voter registration application on file in this county;

(ii) Registration cancelled on ________ (fill in date);

(iii) Registered less than 30 days before the election;

(iv) Incomplete registration received, but additional information not returned;

(v) Voter rejected for registration due to ineligibility;

(vi) Registered to vote, but erroneously listed in wrong precinct;

(vii) Registered to vote in a different precinct within the county;

(viii) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar’s office; and/or;

(ix) Voter erroneously removed from list of registered voters;

(x) Voter is registered;

(xi) Voter voted in another party’s primary, or;

(xii) Other: ______________ (with an explanation).

(2) During the six calendar day period after election day, the voter registrar office shall, during regular business hours, remain open and available for provisional voters to present a valid form of identification to the voter registrar under subsection (h) of this section.

(3) The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter’s registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(A) Not a registered voter;

(B) Registered to vote, but erroneously listed in wrong precinct;

(C) Registered to vote in a different precinct within the county;

(D) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar’s office;

(E) Voter erroneously removed from list of registered voters;

(F) Voter with disability exempt from identification requirements under §13.002(i), Texas Election Code failed to present registration certificate indicating exemption to polling place election official and failed to present certificate or other form of identification at voter registrar’s office on or before the 6th day after election day;

(G) Voter cast a provisional ballot at the polling place due to lack of valid identification and prior to the 6th day after election day, voter applied for and received a disability exemption from identification requirements under §13.002(i), Texas Election Code and received documentation evidencing receipt of the exemption;

(H) Voter is registered to vote in precinct ________;

(I) Voter voted in another party’s primary;

(J) Voter presented a valid form of identification in person at voter registrar’s office within 6 days of election day;

(K) Voter executed affidavit in person at voter registrar’s office within 6 days of election day stating the voter has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief;

(L) Voter executed affidavit in person at voter registrar’s office within 6 days of election day stating voter does not have any identification meeting the requirements of §63.001(b), Texas Election Code as a result of a national disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the ballot was cast, and caused the destruction or inability to access the voter’s identification; or

(M) Other: ______________ (with an explanation).

(4) The Voter Registrar shall sign and date his review of each Provisional Ballot Affidavit Envelope.
The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as of the Election Date for which the Provisional Ballot Affidavit Envelope was submitted.

If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar’s jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar’s request.

The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in secure containers as designated by the General Custodian of election records, along with copies of the List of Provisional Voters, the copy of the Summary of Provisional Ballots, the Notice of Provisional Voter/Polling Place ID receipt forms and Voter Registrar ID Receipt forms. The container must be locked and sealed. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

The Voter Registrar shall keep the envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballot Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar. The Voter Registrar’s designated time of delivery may in no event be later than the time the Early Voting Ballot Board convenes on the 7th day after election day to count provisional ballots per §65.051(a), Texas Election Code.

The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board or General Custodian of election records shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

The custodian of election records shall review the copies of the List of Provisional Voters submitted by the Voter Registrar to determine whether acceptable forms of identification were submitted either at the polling place or to the voter registrar. Provisional ballots cast due to the failure to submit an acceptable form of identification at the polling place shall be treated in the same manner as ballots by mail not timely returned under §86.011, Texas Election Code if the voter failed to correct the defect with the voter registrar as provided under §65.054 and §65.0541, Texas Election Code.

Poll Watchers are not entitled to be present during the Voter Registrar’s review.

Post Election Submission of Identification to Voter Registrar under §65.0241, Texas Election Code.

A voter who cast a provisional ballot due to the failure to submit an acceptable form of identification at the polling place may correct the problem by presenting a valid form of identification to the voter registrar, applying for and receiving a disability exemption under §13.002(i), Texas Election Code and receiving documentation evidencing receipt of the exemption; or completing one of the affidavits set out in §65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar not later than the 6th day after the date of the election.

The voter registrar’s office shall remain open for voters to submit an acceptable form of identification or otherwise correct the failure to submit identification at the polling place during regular business hours on regular business days.

The voter shall submit the Notice of Provisional Voter/Polling Place ID receipt form he or she was given at the polling place to the voter registrar and present a valid form of identification (or one of the appropriate completed affidavits). The voter registrar shall attach the form to the voter’s provisional ballot affidavit envelope.

If the voter does not submit the Notice of Provisional Voter/Polling Place form which he or she was given at the polling place, the voter registrar shall complete a Voter Registrar ID Receipt form with the voter’s name, VID number (if available), and the precinct at which the voter cast his or her vote and sign the Voter Registrar ID Receipt form.

After the voter submits a valid form of identification, applies for the disability exemption under §13.002(i), Texas Election Code, or submits the appropriate affidavit request to the voter registrar, the voter registrar shall review the identification or exemption request to determine its validity.

On the provisional ballot affidavit envelope, the voter registrar shall mark the voter as having presented identification, or having received the disability exemption under §13.002(i), Texas Election Code with documentation evidencing receipt of the exemption, or completed the appropriate affidavit of religious objection or natural disaster on the Notice of Provisional Voter/Polling Place receipt form or the Voter Registrar ID receipt form, as applicable.

If the voter submitted an application for the disability exemption, the voter registrar shall attach the completed application to the voter’s original voter registration application and issue the voter a new certificate containing the indication required under §15.001(c), Texas Election Code.

The voter registrar shall mark the List of Provisional Voters to indicate whether or not the provisional voter submitted an acceptable form of identification or executed one of the authorized affidavits within the six day period after election day.

Early Voting Ballot Board defined for purposes of provisional ballot review. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire board is not required to be present. A minimum of three members of the board is required to conduct the review.

Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Counting Rules.
(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge. The time of delivery may in no event be later than the time the Early Voting Ballot Board convenes on the 7th day after election day to count provisional ballots per §65.051(a), Texas Election Code. If a court order which allowed voters to cast ballots after 7:00 p.m. on election night has been vacated, the General Custodian of Election Records shall segregate the ballots cast by voters who appeared at the polling place after 7:00 p.m. on election night and treat them in the same manner as ballots by mail not timely returned under §86.011, Texas Election Code.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her review.

(3) The Early Voting Ballot Board must receive and review the Provisional Ballot Affidavit Envelopes.

(4) The Early Voting Ballot Board shall review both the Election Judge’s and the Voter Registrar’s notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted, subject to the requirement that the voter has presented a valid form of identification at the polling place or to the voter registrar, except for the exception set out in subparagraph (J) of this paragraph, the ballot shall not be counted.

(A) If the Election Judge indicated that a voter with a disability exemption to the identification requirements did not submit the certificate at the polling place to the election official and the voter failed to present the certificate or another form of identification to the voter registrar, except for the exception set out in subparagraph (J) of this paragraph, the ballot shall not be counted.

(1) [If the Voter Registrar indicates that the Provisional Voter’s registration has been cancelled and provides the date, the ballot shall not be counted.]

(2) [If the Voter Registrar indicates that the Provisional Voter was registered less than 30 days before Election Day and therefore did not have effective registration for the precinct at which he attempted to vote, the ballot shall not be counted.]

(3) [If the Voter Registrar indicates that an incomplete application was received from the Provisional Voter but the required additional information was not returned, the ballot shall not be counted.]

(4) [If the Voter Registrar indicates that the Provisional Voter’s registration application was rejected due to ineligibility, the ballot shall not be counted.]

(5) [If the Voter Registrar indicates that the Provisional Voter is registered to vote at a different precinct other than the one the Voter voted in, the ballot shall not be counted.

(6) [If the board determines that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.]

(7) [If either the Election Judge or the Voter Registrar indicates that the Voter voted in another party’s primary, the ballot shall not be counted.

(8) [The Voter Registrar has information in the office that the Voter did not complete an application, and the Voter is otherwise qualified; the ballot shall be counted.]

(9) [If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.]

(10) [If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(11) [If the voter registrar indicates the voter is not registered to vote, the ballot shall not be counted.

(12) The ballot shall be counted if the voter failed to submit identification at the polling place, but the Voter Registrar indicates the voter submitted an affidavit within 6 calendar days after the date of the election asserting the voter:]

(i) has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief; or

(ii) does not have any identification meeting the requirements of §63.001(b), Texas Election Code as a result of a national disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the ballot was cast, and caused the destruction or inability to access the voter’s identification.

(13) The ballot shall be counted if the voter failed to submit identification at the polling place, but the Voter Registrar indicates the voter presented a valid form of identification in person at the registrar’s office within 6 days after the date of the election, and the voter was otherwise eligible to vote in the election.

(14) If the election judge indicates the voter presented a current certificate and initiated the process of voting a regular ballot under subsection (b)(2) of this section but voted provisionally because he or she failed to present a valid form of identification, the ballot shall be not be counted unless the voter appeared with a valid form of identification within 6 calendar days after the date of the election.
(J) The ballot shall be counted if the voter failed to submit identification at the polling place, but applied for and received the disability exemption under §13.002(t), Texas Election Code and received documentation evidencing receipt of the exemption from the voter registrar by the 6th day after election day, and the voter was otherwise eligible to vote in the election.

(5) The presiding judge of the Early Voting Ballot Board shall indicate the disposition of each ballot on the appropriate space of the Provisional Ballot Affidavit Envelope.

(6) The presiding judge of the Early Voting Ballot Board shall indicate the disposition of each Provisional Ballot Affidavit Envelope on the List of Provisional Voters for that precinct. The Notice of Provisional Voter/Polling Place ID receipt form or Voter Registrar ID Receipt form, whichever is applicable, shall be attached to and retained with the voter’s provisional ballot affidavit envelope.

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted in the regular manner, unless the manager of the central counting station decides that the ballot board shall count the ballots manually and add the totals to the computer count for a canvass total. See paragraph (9) of this subsection for electronic procedures, if the manager decides to count ballots in regular manner. If counted by hand, the ballots are tallied by precinct in the regular manner. The board prepares the returns and submits the returns to the General Custodian of election records.

(8) The Provisional Ballot Affidavit Envelopes for accepted ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked “Accepted” and the Provisional Ballot Affidavit Envelopes and their Provisional Ballots for the rejected ballots shall be placed in an Envelope for Provisional Ballot Envelopes marked “Rejected”.

(9) If the provisional ballots are to be counted electronically:

(A) The manager of the central counting station shall decide whether the ballot board shall manually count the ballots and be manually added to the computer count for a canvass total or whether the central counting station shall reconvene.

(B) The manager shall send notice to the presiding judge of the ballot board prior to reconvening the board as to whether the ballots are to be counted manually by the board or whether the ballots are merely to be prepared for delivery to the central counting station.

(C) The manager must order a second test to be conducted prior to the count. The test must be successful.

(D) After the second successful test is conducted, the unofficial election results, preserved by legal counsel and found to be within the agency's legal authority to adopt.

(E) Once the ballots have been counted, results shall be prepared in the regular manner. The manager shall prepare a certification and attach it to the returns, then place the certification and returns in envelope #1 to be delivered to the presiding officer of the canvassing board indicating that the result supersedes any returns printed prior to the reconvening of the central counting station after election day.

(F) After the results have been prepared, a successful third test must be performed.

(G) The results, ballots, and distribution of ballots and all records shall be made in the regular manner.

(10) Once counted, the Provisional Ballot Affidavit Envelopes, along with any Notices of Provisional Voter/Polling Place ID receipt or Voter Registrar ID receipt forms, shall be re-locked in the container and returned to the General Custodian of election records. The key shall be delivered to the General Custodian of the key.

(11) [410] The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted and Provisional Ballot Affidavit Envelopes.

(12) [412] The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(13) [412] The Lists of Provisional Voters for each precinct, along with any copies of the List forms, shall be retained and used by the General Custodian of election records to provide information to Voters on whether the provisional ballot was counted or not.

(14) [413] All Provisional Ballot Affidavit Envelopes, and the List of Provisional Voters, and the Notice of Provisional Voter/Polling Place ID receipt forms and Voter Registrar ID Receipt forms are public records.

(15) [414] Rejected Provisional Ballot Affidavit Envelopes may not be opened except by court order.

(16) [415] Poll Watchers are entitled to be present at the meeting of Early Voting Ballot Board pursuant to §33.054 of the Texas Election Code.

(k) [414] Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(l) [415] Notice to Provisional Voters. Not later than the 10th day after the local canvass, the presiding judge of the Early Voting Ballot Board shall deliver written notice regarding whether the provisional ballot was counted, and if the ballot was not counted, the reason the ballot was not counted. The presiding judge shall use the information provided on the Provisional Ballot Affidavit Envelope to obtain the proper mailing address for the Voter and the final resolution of the provisional ballot.

(m) Effective date. The 2011 amendment to this rule will be effective for elections held on or after January 1, 2012.

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 September 12, 2011.

TRD-201103719
John Sepehri
General Counsel
Office of the Secretary of State
Economic Regulation

Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 463-5650

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

PROPOSED RULES  September 23, 2011  36 TexReg 6229
CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.5, relating to Definitions, and §25.109, relating to Registration of Power Generation Companies and Self-Generators. The proposed amendments add references to energy storage equipment and facilities as required by Senate Bill 943 of the 82nd Legislature, Regular Session in 2011 (SB 943). This proposal amends §25.5 and §25.109 to address the registration, interconnection, and operation of electric energy storage equipment and facilities in Texas. Project Number 39657 is assigned to this proceeding.

Temujin Roach, Economist, Competitive Markets Division, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Temujin Roach has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be compliance with SB 943. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There are no economic costs to persons who are required to comply with the amendments.

Temujin Roach has also determined that for each year of the first five years the amendments are in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission’s offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 14 days after publication.

Initial comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 24 days after publication. Comments should be organized in a manner consistent with the organization of the amended rules. All comments should refer to Project Number 39657.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, SB 943, which amends PURA §31.002(10) and adds PURA Chapter 35, Subchapter E, which includes electric energy storage equipment or facilities in the definition of “power generation company,” and allows the owner or operator of such equipment or facilities to interconnect, obtain transmission service, and use the equipment or facilities to sell electricity or ancillary services at wholesale.

Cross Reference to Statutes: PURA §14.002 and SB 943 §1 and §2 (codified as PURA §31.002(10) and Chapter 35, Subchapter E).

§25.5. Definitions.

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

(1) - (81) (No change.)

(82) Power generation company (PGC)—A person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of “electric utility” under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(83) - (144) (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 September 2, 2011.

TRD-201103640
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 936-7223

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.109

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, SB 943, which amends PURA §31.002(10) and adds PURA Chapter 35, Subchapter E, which includes electric energy storage equipment or facilities in the definition of “power generation company,” and allows the owner or operator of such equipment or facilities to interconnect, obtain transmission service, and use the equipment or facilities to sell electricity or ancillary services at wholesale.

Cross Reference to Statutes: PURA §14.002 and SB 943 §1 and §2 (codified as PURA §31.002(10) and Chapter 35, Subchapter E).

(a) Application.

(1) A person that owns an electric generating facility, or electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies, in Texas and is either a power generation company (PGC), as defined in §25.5 of this title (relating to Definitions), or a qualifying facility (QF) as defined in §25.5 of this title, and generates electricity intended to be sold at wholesale, must register as a PGC.

(2) - (3) (No change.)

(b) - (i) (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 September 2, 2011.

TRD-201103641
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 936-7223

16 TAC §25.101

The Public Utility Commission of Texas (commission) proposes an amendment to §25.101, relating to Certification Criteria. The proposed amendment would implement House Bill 971 of the 82nd Legislature, Regular Session in 2011 (HB 971), which requires the commission to establish criteria to use in evaluating a certificate of convenience and necessity for an electric transmission project that serves the Electric Reliability Council of Texas (ERCOT) power region, that is not necessary to meet state or federal reliability standards, and that does not serve a competitive renewable energy zone. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project. Project Number 39537 is assigned to this proceeding.

Mike Lee, Engineer, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforing or administering the amendment.

Mr. Lee has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be compliance with HB 971. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Lee has also determined that for each year of the first five years the proposed amendment is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 20 days after publication.

Initial comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 39537.

The commission also requests comments on the following questions:

1. Should the commission, consistent with ERCOT Nodal Protocols, Section 3.11.2(6), find a need for a transmission project if the levelized ERCOT-wide annual generator revenue reduction attributable to the project is equal to or greater than the first-year annual revenue requirement for the project?

2. When comparing the projected levelized ERCOT-wide annual production cost savings or levelized ERCOT-wide annual generator revenue reduction attributable to a transmission project to the first-year annual revenue requirement for the project, as described in ERCOT Nodal Protocols, Sections 3.11.2(4)-(6), should the commission adopt a minimum ratio of the production cost savings or generator revenue reduction to the first-year annual revenue requirement that is higher than ratio currently required by ERCOT? Should the ratio be different when comparing the production cost savings than when comparing the generator revenue reduction?

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PUR), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, HB 971, Section 2, codified as PURA §37.056(d), which requires the commission to establish criteria for granting a certificate for a transmission project that serves the ERCOT power region, that is not necessary to meet state or federal reliability standards, and that does not serve a competitive renewable energy zone. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and HB 971, Section 2, codified as PURA §37.056(d).


(a) (No change.)

(b) Certificates of convenience and necessity for new service areas and facilities. Except for certificates granted under subsection (e) of this section, the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the

PROPOSED RULES  September 23, 2011  36 TexReg 6231
(1) - (2)  (No change.)

(3) New electric transmission line. All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports).

(A) Need: [In determining the need for a proposed transmission line, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust wholesale competition. The commission shall give great weight to:]

(ii) The following must be met for a transmission line in the Electric Reliability Council of Texas (ERCOT) power region that is not necessary to meet state or federal reliability standards, is not intended to serve a competitive renewable energy zone, or is not needed to interconnect a transmission service customer or an end-use customer. The applicant must present an economic cost-benefit study that shows that the levelized ERCOT-wide annual production cost savings attributable to the proposed project is equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part. For a project where the levelized ERCOT-wide annual production cost savings attributable to the proposed project are not equal to or greater than the first-year annual revenue requirement for the proposed project, the applicant must present an economic cost-benefit study that shows that the levelized ERCOT-wide annual generator revenue reduction attributable to the proposed project is equal to or greater than the first-year annual revenue requirement for the proposed project. The commission shall give great weight to a recommendation from ERCOT for the proposed transmission project and any study by ERCOT supporting the recommendation using the cost-benefit comparisons described in this clause. The study must have been completed no more than 18 months before the application for the transmission line was filed with the commission.

(iii) For a transmission line not addressed by clause (i) of this subparagraph, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust wholesale competition. The commission shall give great weight to:

(I) the recommendation of an organization that meets the requirements of PURA §39.151; and/or

(II) written documentation that the application for a transmission line is needed to interconnect a transmission service customer or an end-use customer.

(III) the recommendation of an organization that meets the requirements of PURA §39.151; and/or

(III) written documentation that the proposed facility is needed for the purpose of interconnecting a new transmission service customer.

(B) - (D)  (No change.)

(c) - (g)  (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.
§283.8. Reciprocity Requirements.

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

(d) If a reciprocity applicant should fail the Texas Pharmacy Jurisprudence Examination, written notification of intent to retake the exam shall be received in the board office no later than three weeks prior to the examination date.

(d) [ei] An applicant is not eligible for licensing by reciprocity unless the state in which the applicant is currently or was initially licensed as a pharmacist also grants reciprocal licensing to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

§283.11. Examination Retake Requirements.

(a) Licensing by examination. Should an applicant fail to achieve the minimum grade on the NAPLEX or Texas Pharmacy Jurisprudence Examination or both, the following is applicable.

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

(3) If the applicant fails to achieve the minimum grade on both NAPLEX and the Texas Pharmacy Jurisprudence Examination, the applicant shall retake the examinations [at the same administration] until a passing grade is achieved on one of the examinations. Such retakes shall be as specified in paragraphs (1) and (2) of this subsection.

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on September 12, 2011.

TRD-201103712
Gay Dodson, R.Ph., Executive Director/Secretary
Texas State Board of Pharmacy

Earliest possible date of adoption: October 23, 2011

For further information, please call: (512) 305-8028

+m+m+

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY

CLASS A

22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The proposed amendments, if adopted, implement the provisions of H.B. 2069, passed during the 82nd Regular Session of the Texas Legislature, allowing pharmacist to "accelerate refills" and dispense up to a 90-day supply of a dangerous drug if the total amount dispensed does not exceed the amount authorized on the prescription, patient consents to the change, physician is notified, physician does not specify that it is medically necessary to dispense the initial quantity, the drug is not a psychotropic, and the patient is at least 18 years old; clarify the prescription drug order information for prescriptions issued by advanced practice nurses or physician assistants and remove the requirements for identification to be on the prescription order; clarify the prescription recordkeeping requirements; specify that the supervising physician’s name must be recorded for prescriptions issued by advanced practice nurses, physician assistants, or pharmacists; and update the recordkeeping requirements for transferred prescriptions maintained in a data processing system.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that patients can receive up to a 90-day supply of medication through accelerated refills when allowed, accurate information is maintained in the pharmacies records with regard to prescriptions issued by a physician’s assistant, advanced nurse practitioner or pharmacy; and proper records are kept when prescriptions are transferred between pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., October 28, 2011.
The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

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

(5) Original prescription drug order records.

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

(C) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (9) of this subsection relating to accelerated refills.

(D) - (E) (No change.)

(6) Prescription drug order information.

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

(C) All original written prescriptions carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(i) name and address of the patient;

(ii) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(iii) name, [identification number], original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;

(v) name, strength, and quantity of the drug;

(vi) directions for use;

(vii) indications for use, if appropriate;

(viii) date of issuance; and

(ix) number of refills authorized.

(D) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard-copy prescription or in the pharmacy’s data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) [effective January 1, 2009], initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance;

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563; and

(vii) [effective June 1, 2010] for each new prescription the initials or identification code of the pharmacist responsible for providing counseling.

(7) Refills.

(A) Refills may be dispensed only in accordance with the prescriber’s authorization as indicated on the original prescription drug order except as authorized in paragraph (9) of this subsection relating to accelerated refills.

(B) - (F) (No change.)

(8) (No change.)

(9) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

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

(e) Prescription drug order records maintained in a data processing system.

(1) (No change.)

(2) Records of dispensing.

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

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner’s name; and the supervising physician’s name if the prescription was issued by an advanced practice nurse, physician assistant or pharmacist;
(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;
(vi) quantity dispensed;
(vii) initials or an identification code of the dispensing pharmacist;
(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;
(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:
   (I) patient’s address;
   (II) prescribing practitioner’s address;
   (III) practitioner’s DEA registration number, if the prescription drug order is for a controlled substance;
   (IV) quantity prescribed, if different from the quantity dispensed;
   (V) date of issuance of the prescription drug order, if different from the date of dispensing; and
   (VI) total number of refills dispensed to date for that prescription drug order; and
   (x) any changes made to a record of dispensing.

(D) - (K) (No change.)

(3) (No change.)

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(A) - (D) (No change.)

(E) The pharmacist or pharmacist intern transferring the prescription drug order information shall ensure the following occurs:
   (i) the prescription is voided in the data processing system; and
   (ii) the following information is stored with the invalidated prescription drug order in the data processing system:
      (I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;
      (II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;
      (III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and
      (IV) the date of the transfer.

   (F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall ensure the following occurs:
      (i) the prescription record indicates the prescription was a transfer; and
      (ii) the following information is stored with the prescription drug order in the data processing system:
         (I) original date of issuance and date of dispensing or receipt, if different from date of issuance;
         (II) original prescription number and the number of refills authorized on the original prescription drug order;
         (III) number of valid refills remaining and the date of last refill, if applicable;
         (IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and
         (V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

   (G) - (H) (No change.)

   (I) If the data processing system does not have the capacity to store all the information required in subparagraphs (E) and (F) of this paragraph, the pharmacist is required to record this information on the original or transferred prescription drug order.

   (J) (No change.)

   (5) - (6) (No change.)

   (F) - (j) (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 September 12, 2011.
PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.4

The Texas State Board of Examiners of Psychologists proposes amendments to §463.4, Applicants with Disabilities. The amendments are to comply with Senate Bill 867 passed by the 82nd Texas Legislature, which requires each licensing agency of the state to adopt rules concerning accommodation of an individual with dyslexia for any test required to obtain a license.

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

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

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

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

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

§463.4. Applicants with Disabilities.

(a) The Texas State Board of Examiners of Psychologists shall comply with applicable provisions of the Americans with Disabilities Act in its applications procedures by providing reasonable accommodations that do not violate the Board’s Act and Rules.

(b) It is the responsibility of the individual applicant to inform the Board in advance of any reasonable accommodations needed during the application process, including any examinations conducted by the Board. Only requests which give the Board sufficient notice and opportunity to provide reasonable accommodations without disrupting the normal business of the agency shall be considered.

(c) Dyslexia. Dyslexia is defined by §51.970 of the Texas Education Code. The Board will provide reasonable accommodation to an applicant for licensure who complies with subsection (b) of this section and who provides proof of a diagnosis of dyslexia from a qualified practitioner. The practitioner should also identify the type of examination accommodation that is recommended for the applicant.

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 September 8, 2011.

TRD-201103683

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists

Early possible date of adoption: October 23, 2011

For further information, please call: (512) 305-7706

22 TAC §463.15

The Texas State Board of Examiners of Psychologists proposes amendments to §463.15, Oral Examination. The amendments are to add an additional possible exemption from the Oral Examination.

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

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

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

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

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

§463.15. Oral Examination.

(a) Application Requirements. An application for the Oral Examination includes an application form, current passport picture of the applicant and required fee.

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the Oral Examination administered by the Board. Only provisionally licensed psychologists may apply to take the Oral Examination. [The Board shall waive this requirement for Specialists of the American Board of Professional Psychology, Health Service Providers listed in the National Register and for individuals who qualify for licensure under reciprocity.]

(c) Waivers from the Oral Examination. The Board shall waive the Oral Examination for the following:
(1) Persons who have been actively licensed for the independent practice of psychology at the doctoral level in another state for at least the five years immediately preceding application for licensure as a psychologist and who have no disciplinary action from any health licensing board provided that documentation of this status is provided directly to the Board from the other health licensing board(s);

(2) Persons who were required to take an oral examination in order to provide independent practice of psychology at the doctoral level and to obtain licensure as a licensed psychologist in another state provided that confirmation of passage of that exam is provided to the Board from the other state;

(3) Specialists of the American Board of Professional Psychology;

(4) Health Service Providers listed in the National Register of Health Service Providers in Psychology; and

(5) Persons who qualify for licensure under reciprocity.

(d) [463.27(b)] A candidate for the Oral Examination must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the examination based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the examination.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content score of 9 points for a well-articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content areas are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses, etc.);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection, etc.);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, and industrial and organizational.

(e) [463.27(c)] Each candidate receives an informational brochure prior to the Oral Examination.

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 September 8, 2011.
TRD-201103684
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 305-7706

22 TAC §463.27

The Texas State Board of Examiners of Psychologists proposes amendments to §463.27, Temporary License for Persons Licensed in Other States. The amendments provide an exemption from the Oral Examination as a requirement for substantial equivalency for persons desiring temporary licensure.

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

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

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

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

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

§463.27. Temporary License for Persons Licensed in Other States.

(a) Temporary licensure is available to applicants for a period of not longer than 30 days from the time the application is approved until the expiration of the 30 days, provided the applicant meets the following conditions:

(1) Submission of a completed application for temporary licensure, including a brief description of the type of psychological service to be provided which is acceptable to the Board and the requested time period for the temporary license;

(2) Submission of the required fee;

(3) Submission of proof that the applicant holds current licensure to practice as a licensed psychologist or a licensed psychologi-
cal associate in another state where licensing requirements are substantially equivalent to the Act and Rules of the Board;

(4) Submission of documentation directly from the state in which the applicant is currently licensed indicating that the applicant is in good standing; and

(5) The applicant provides documentation that the applicant has passed the Examination for Professional Practice in Psychology at the Texas cut-off for the type of temporary license sought.

(b) Licensed psychologists and licensed psychological associates with temporary licenses must practice in adherence to the Board rule §465.2(i)(4b) of this title (relating to Supervision), and may consult with the supervising Texas licensed psychologist.

(c) The specific period of time for which the applicant is issued a temporary license is stated in the Board’s approval letter which issues the temporary license.

(d) Substantial equivalency of the other state may be documented by the applicant providing a copy of the other board’s rules and regulations with pertinent sections highlighted to indicate training and exam requirements for a particular type of license. This material is then reviewed for substantial equivalency by the Board.

(e) A temporary license is not available to an applicant for permanent licensure in this state. Upon receipt of an application for a permanent license, the Board nullifies a temporary license and the individual can no longer practice legally in Texas.

(f) The holder of a temporary license will not be further notified as to the ending date of the temporary license, other than the ending date that is provided in the initial issuance letter. Practicing with an expired temporary license is illegal and may subject the individual to disciplinary review by the Board.

(g) Purposes for which a temporary license may be issued include: to serve as an expert witness in court, to assist a patient in transition to a mental health practitioner in Texas, and otherwise as approved by the Board.

(h) Applicants for temporary licenses who hold current status as Certificate of Professional Qualification in Psychology, National Health Service Provider, or American Board of Professional Psychology may have documentation from the credentialing entity sent directly to the Board as compliance with and in lieu of subsection [subsections] (a)(3) and (5) of this section.

(i) An applicant for temporary license may be waived from the oral examination requirement of substantial equivalency per subsection (d) of this section, provided that:

(1) the applicant has been actively licensed for the independent practice of psychology at the doctoral level in another state for at least the five years immediately preceding application for temporary licensure and has no disciplinary action from any health licensing board, provided that documentation of this status is provided directly to the Board from the other state licensing agency; or

(2) the applicant was required to take an oral examination in order to provide independent practice of psychology at the doctoral level and to obtain licensure as a licensed psychologist in another state provided that confirmation of passage of that exam is provided to the Board from the other state.

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.
compensation system. This amended statute also requires the Commissioner by rule to prescribe the procedures to be used for on-site visits and to specify the records subject to inspection during the on-site visits.

Finally, HB 2605 amended Labor Code, Subchapter B, Chapter 415 by adding §415.0211 which authorizes the Commissioner ex parte to issue an emergency cease and desist order. This statute provides the circumstances under which the Commissioner ex parte may issue an emergency cease and desist order. This statute further provides for the procedure by which the person affected by the order is to be served with the order and the procedure for contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH.

This proposal is necessary to implement the above described legislative changes. It conforms Division rules in Chapter 180 to reflect that the Commissioner has the final decision making authority in all Division enforcement cases heard at SOAH. It also proposes rules and procedures that will govern ex parte emergency cease and desist orders and rules and procedures that would govern on-site visits conducted by the Division.

The Division is also proposing other amendments which are more fully described below that are intended to provide the Division with greater flexibility in performing compliance audits, including targeted audits when necessary. Finally, other amendments are proposed throughout the rule text to: (i) correct typographical, grammatical, and punctuation errors in the current rule text; (ii) re-letter and renumber rule text; (iii) clarify existing provisions in Chapter 180; and (iv) make non-substantive changes in terminology such as changing the term "rules" to "division rules", "audit" to "compliance audit", and "commission" to "division."

The Division published an informal draft of these proposed amendments and new rules on the Division's website on July 8, 2011. The informal comment period closed July 29, 2011 and there were 11 informal comments received. The Division accordingly accounted for a number of the received informal comments in this proposal.

Proposed amendment to §180.1. Several definitions are proposed for deletion in §180.1 because they are unnecessary in this chapter or are defined elsewhere in this rule. Definitions proposed for deletion are "accident prevention services inspection", "audit violations", and "controlled substances." These definitions are proposed for deletion because they are not used in this chapter. The definition for "performance review" is proposed for deletion because the term is synonymous with the term "compliance audit" which is defined in §180.1(7).

The purpose of the proposed amendments to §180.1(7) is to update this rule to provide more clarity as to the meaning of "compliance audit" where the term is used in this chapter. The proposed amendments to §180.1(7) clarify the definition of "compliance audit." The proposed amendments also delete from the definition the requirement that "[t]hese audits are conducted using a census or statistical sampling to ensure that the findings of the audit are representative of overall performance in the area being audited." Census or statistical sampling requires a larger amount of data, records, or information for auditing from the system participant. The Division proposes to delete this text concerning census and statistical sampling in order to give the Division greater flexibility in selecting the sample size when performing compliance audits and to perform targeted audits, when necessary. Additionally, the results of census or statistical sampling were necessary in the past in determining the amount of a penalty to impose under the Division’s repealed penalty matrix because census and statistical sampling ensured that the findings of the audit were representative of overall performance in the area being audited. The rules that pertained to the penalty matrix were repealed effective January 9, 2011. Therefore, these provisions relating to census and statistical sampling are no longer necessary.

The proposed deletion of §180.1(8)(B)(iii) is necessary because the Division does not intend to treat a conviction that is expunged under Code of Criminal Procedure Article 55.04, Section 1 as a conviction under this chapter.

Proposed amended §180.1(11) clarifies that the definition for "emergency" does not apply to the word "emergency" as used in proposed new §180.10 which pertains to "ex parte emergency cease and desist orders." Ex parte emergency cease and desist orders are governed by Labor Code §415.0211 and proposed new §180.10.

Proposed amendment to §180.3. Throughout this rule the Division proposes to clarify that the term "audit" refers to a "compliance audit" as that term is defined in §180.1(7). These proposed amendments are non-substantive and are for the purposes of clarity only.

The proposed amendment to §180.3(b) deletes the word "agent" as used in relation to "system participant" because the definition for "system participant" in renumbered §180.1(21) includes the agent of the person subject to the Act, or a rule, order or decision of the Commissioner. This proposed amendment is non-substantive.

The proposed amendment to §180.3(e) adds the language "and manner" to "format" to clarify the meaning of the rule. This proposed amendment clarifies that the Division is authorized during a compliance audit to specify the manner in which information and records are to be transmitted or delivered to Division staff. Common examples of manner of transmission or delivery that the Division would specify might include hand delivery, transmission by mail, and transmission by electronic means such as fax and email.

Section 180.3(h) authorizes the Division to publish final compliance audit reports on the Division’s internet website. Proposed amendments to §180.3(h) delete provisions in this rule that relate to subsequent (follow-up) audits. The Division proposes to delete these provisions in order to provide the Division with more flexibility and discretion in publishing and removing final audit reports from the Division’s website.

Proposed addition of §180.4. This proposed new rule applies to on-site visits and provides the requirements and procedures for on-site visits performed by the Division. The purpose of the proposed new rule is to implement the provisions of recently amended Labor Code §414.005 which authorizes the Division to conduct announced or unannounced on-site visits when reviewing the operations of a person regulated by the Division, including an agent of the person performing functions regulated by the Division, to determine compliance with the Act. This statute further provides that it is not required that the on-site visits be announced. It also requires the person to make available to the Division all records relating to the person’s participation in the workers’ compensation system.
This proposed rule complies with Labor Code §414.005(e) which requires the Commissioner by rule to prescribe the procedures to be used for both announced and unannounced on-site visits, including specifying the records subject to review during on-site visits. The proposed rule provides that an on-site visit will occur during the system participant’s normal business hours. The proposed rule further provides that the visit must not disturb a health care provider’s provision of health care. Proposed §180.4(e) provides that for both announced and unannounced on-site visits written notice shall be provided that specifies the alleged violation(s) that is the subject of the on-site visit; lists the date, time, location, and conditions of the on-site visit. Notice under this proposed rule would be in writing and provided at least 10 calendar days before the on-site visit, except that written notice of an unannounced on-site visit would be provided at the time of the on-site visit. The proposed rule also provides that the person who is the subject of the on-site visit shall designate a general contact person at the premises who is familiar with the system participant’s procedures and recordkeeping systems related to the records and information requested during the on-site visit.

The proposed rule also requires that the designated person provide access to requested personnel and information and respond to the needs and inquiries of Division staff during the on-site visit. The proposed rule requires a system participant during an on-site visit to make available to the Division in the format and manner specified by the Division all records relating to the person’s participation in the workers’ compensation system. This proposed rule then specifies the types of records that shall be made available upon the Division’s request during the on-site visit. As stated, this proposed rule authorizes the Division to specify the format and manner in which the information must be provided to the Division. Common examples of a format that the Division would specify might include hardcopies of the information and electronic formats such as an Excel spreadsheet. Common examples of manner of transmission that the Division would specify might include hand delivery, transmission by mail, and transmission by electronic means such as fax and email.

Proposed amendment to §180.5. This rule’s section heading is proposed for clarification by re-titling the rule "Access to Workers’ Compensation Related Records and Information.”

The proposed amendments to subsection (a) replace the text "person subject to monitoring and review by the commission" with "system participant." “System participant” is a term defined in §180.1 of this title, and this amendment clarifies that the Division during any review or investigation activity may request from any system participant all records and information held by that system participant that relates to the issues being reviewed or investigated.

Proposed amendments to subsection (a) also authorize the Division to specify the format and manner in which the requested records or information must be submitted. As previously stated, common examples of "format" the Division would specify might include hardcopies of the information and electronic formats such as an Excel spreadsheet. Common examples of manner of transmission of information the Division would specify might include hand delivery, transmission by mail, and transmission by electronic means such as fax and email.

Proposed amendment to §180.8. The proposed amendment to subsection (a) of this rule clarifies that a notice of violation (NOV) is not required to be issued before or after the issuance of an ex parte emergency cease and desist order described by newly enacted Labor Code §415.0211. Ex parte emergency cease and desist orders are governed by Labor Code §415.0211 and proposed new §180.10.

Government Code §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default. Proposed amendments to §180.8(e) - (h) clarify that the Commissioner issues the default order when a system participant charged with an administrative penalty defaults and the Division seeks informal disposition by default as authorized by Government Code §2001.056. These proposed amendments are necessary to conform the rule with current law that gives the Commissioner the final decision making authority in all Division enforcement cases heard at SOAH.

Other proposed amendments to §180.8(h) clarify the timeframe within which a motion to set aside a default order and reopen the record must be filed with the Division. The proposed amendment clarifies that such motions must be filed prior to the time the Commissioner’s order becomes final as provided by Government Code, Chapter 2001, Subchapter F. Specifically, Government Code §2001.144 governs when a decision will become final. The proposed amendments also specify that such motions shall be filed with the Division’s Chief Clerk of Proceedings.

Proposed §180.8(i) clarifies that a motion to set aside a default order and reopen the record is not a motion for rehearing pursuant to the provisions of Government Code, Chapter 2001, Subchapter F. A motion for rehearing is required in order to exhaust administrative remedies for purposes of judicial review. Even after the Commissioner has entered a default order and the case has been dismissed from the docket of SOAH, the charged party who has defaulted may still file a motion for rehearing under Government Code, Chapter 2001, Subchapter F. Specifically, Government Code §2001.146 governs motions for rehearing.

Proposed addition of §180.9. For purposes of clarity in Division rules, subsections (a) - (c) of current §180.27 are proposed for transfer to this proposed new rule. These subsections pertain to proposals for decision and are proposed to be located in Subchapter A of Chapter 180 because Subchapter A contains the general rules for enforcement. The remaining subsections of §180.27 pertain to restoration of doctors’ practice privileges and would remain in that section.

For clarification purposes proposed §180.9(c) changes the language from “further sanctioning by the division” to “additional administrative violations.” Additionally, this proposed rule clarifies the types of cases for which the Commissioner has the authority to issue final decisions following proposals for decision from SOAH and is consistent with the legislative amendments in HB 2605 pertaining to proposals for decision.

Proposed addition of §180.10. This proposed new rule provides the procedures for ex parte emergency cease and desist orders in accordance with newly enacted Labor Code §415.0211. This proposed rule incorporates many of the statutory provisions in Labor Code §415.0211 that govern ex parte emergency cease and desist orders such as the provisions that set out the cases where such an order may be issued and provisions setting out the procedures for contesting the order.

To make this proposed new rule more uniform with rules promulgated by the Department that pertain to ex parte emergency
cease and desist orders, the following proposed amendments incorporate much of the same language contained in 28 TAC Chapter 1, Subchapter H, concerning Cease and Desist Orders.

First, this proposed rule sets out what information will be included in an ex parte emergency cease and desist order. As required by Labor Code §415.0211, the order will contain a statement of the charges and will require the person to immediately cease and desist from the acts, methods or practices stated in the order. This proposed rule will require the order to also include (i) the name and last known address of the person subject to the order; (ii) the alleged violative conduct that the Commissioner believes will result in harm to the health, safety, or welfare of another person; (iii) the rights of the person to contest the order; (iv) a statement as to when the order will become final; and (v) a statement of the actions that the Division may take against the person if the person violates the order.

Second, Labor Code §415.0211(d) provides that a SOAH hearing must be held not later than the 10th day after the date the Commissioner receives the request for hearing unless the parties agree to a later hearing date. The proposed rule requires such agreements to be in writing and requires the person who is adversely affected by the order to file any written agreement with the Division’s Chief Clerk of Proceedings before the expiration of the 10th day after the date the request for hearing is received.

Third, the proposed rule also specifies which party has the burden of proof in a SOAH hearing in which an ex parte emergency cease and desist order is contested. Consistent with Labor Code §415.0211(d), which states that the person requesting the hearing is entitled to show cause why the order should not be affirmed, the proposed rule provides that the burden of proof is on the person requesting the hearing to show cause why the order should not be affirmed.

Finally, the proposed rule sets out when the Commissioner may enter a stay of an ex parte emergency cease and desist order. The proposed rule provides that upon written motion of any party to the hearing the Commissioner may enter a stay before the date of the show cause hearing. The proposed rule provides that if the motion is not granted before the date of the show cause hearing, then the motion is denied and notice of such denial is not required.

Proposed amendment to §180.27. The rule heading is proposed to be restituted as “Restoration” for the purpose of clarifying its content. Subsections (a) - (c) of this rule are proposed for deletion because these provisions are to be moved to proposed new §180.9. The remaining provisions in §180.27 are proposed to be restated and renumbered accordingly.

Matthew Zurek, Executive Deputy Commissioner for Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed amendments and rules will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the proposed sections. There also will be no measurable effect on local employment or the local economy as a result of the proposed amendments and rules.

Mr. Zurek has also determined that the proposed amendments and rules will have no or minimal impact on the cost of the Division’s compliance auditing, requests for information, monitoring activities, and enforcement processes because the proposed amendments and rules primarily clarify existing rules and implement statutory amendments enacted by HB 2605 to the Labor Code which, in respect to the workers’ compensation system, were developed by the Legislature to further the goal of ensuring the prompt, high quality, appropriate, and necessary medical care for injured employees while containing system costs.

There will be no fiscal implication to local governments as a result of enforcing or administering the proposed amendments and rules.

Mr. Zurek determined that for each year of the first five years the proposed amendments and rules will be in effect, there will be several public benefits anticipated as a result of the proposal. These benefits include Division rules that reflect the amendments made by HB 2605 to the Labor Code to (i) assist the Division with its statutory requirement to promptly detect and appropriately address acts or practices of noncompliance with the Act and Division rules and (ii) effectively educate and clearly inform each person who participates in the workers’ compensation system as a claimant, employer, insurance carrier, health care provider, or other participant of the person’s rights and responsibilities under the system and how to appropriately interact with the system. The proposed amendments and rules are contemplated to provide additional clarity and guidance to system participants to comply with relevant Labor Code provisions.

The Division does not anticipate any additional cost to persons required to comply with the proposed amendments and rules. Any costs to such persons for each year of the first five years the proposed amendments and new rules will be in effect are the result of the legislative enactment of HB 2605 and not the result of the adoption, enforcement, or administration of the proposed amendments and rules.

As required by Government Code §2006.002(c), the Division has determined that this proposal will not have an adverse economic effect on small or micro businesses. The Division’s analysis of any possible costs for compliance with these proposed amendments and rules that are in the Public Benefit/Cost Note section of this proposal is also applicable to small and micro-businesses. Because these proposed amendments and rules will not have an adverse economic effect on small or micro-businesses, Government Code §2006.002(c) does not require an economic impact statement or regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by these proposed amendments and rules and that these proposed amendments and rules do not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on October 24, 2011. Comments may be submitted via the internet through the Division’s internet website at www.tdi.texas.gov/wc/rules/proposerule/index.html, or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers’ Compensation, Workers’ Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A public hearing on this proposal will be held on October 17, 2011 at 1:30 p.m. CST in the Tippy Foster Conference Room of the Texas Department of Insurance, Division of Workers’ Compensation, 7551 Metro Center Drive, Austin, Texas 78744-1645. The Division provides reasonable accommodations for persons
attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend the hearing please contact Idalia Salazar at (512) 804-4403 at least two business days prior to the confirmed hearing date.

The hearing will also be audio streamed; to listen to the audio stream access the Public Outreach Events /Training Calendar website at www.tdl.texas.gov/wc/events/index.html. Audio streaming will begin approximately five minutes before the scheduled time of the hearing.

The public hearing date, time, and location should be confirmed by those interested in attending or listening via audio stream; the hearing may be confirmed by visiting the Division’s Public Outreach Events/Training Calendar website at http://www.tdl.texas.gov/wc/events/index.html. Written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

28 TAC §§180.1, 180.3 - 180.5, 180.8 - 180.10

The amendments and new rules are proposed under Labor Code Chapter 414; Government Code Chapter 2001; Government Code §2001.056; Labor Code §§402.00111, 402.00114(a)(2), 402.00115, 402.00116(a) and (b), §402.00128(b), 402.021(b)(7) - (9), 402.061, 402.072(a), 402.073(b) and (c), 402.074, 414.003 - 414.005, 415.0211, and 415.034.

Labor Code Chapter 414 pertains to the enforcement of compliance and practice requirements, which includes monitoring duties, compilation and use of information, performance review of insurance carriers and the investigation unit.

Government Code Chapter 2001 pertains to the administrative law governing minimum standards of uniform practice and procedures for state agencies and the judicial review of state agency actions.

Government Code §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.

Labor Code §402.00111 provides that except as otherwise provided by Labor Code, Title 5, the Commissioner shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5.

Labor Code §402.00114(a)(2) requires the Division to ensure that Labor Code, Title 5 and other laws regarding workers’ compensation are executed.

Labor Code §402.00115 requires the Division to efficiently implement Labor Code, Title 5 and Division rules.

Labor Code §402.00116(a) provides that the Commissioner of Workers’ Compensation is the Division’s chief executive and administrative officer and shall administer and enforce Labor Code, Title 5, other workers’ compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or the Commissioner.

Labor Code §402.00116(b) provides that the Commissioner has the powers and duties vested in the Division by Labor Code, Title 5 and other workers’ compensation laws of this state.

Labor Code §402.00128(b) provides that the Commissioner or the Commissioner’s designee may investigate misconduct; hold hearings; issue subpoenas to compel the attendance of witnesses and the production of documents; administer oaths; take testimony directly or by deposition or interrogatory; assess and enforce penalties established under Labor Code, Title 5; enter appropriate orders as authorized by Labor Code, Title 5; institute an action in the Division's name to enjoin the violation of Labor Code, Title 5; initiate an action under Labor Code §410.254 to intervene in a judicial proceeding; prescribe the form, manner, and procedure for the transmission of information to the Division; correct clerical errors in the entry of orders; and exercise other powers and perform other duties as necessary to implement and enforce Labor Code, Title 5.

Labor Code §402.021(b)(7) - (9) requires the workers’ compensation system of this state to promptly detect and appropriately address acts or practices of noncompliance with the Act and rules adopted under the Act; effectively educate and clearly inform system participants of the person’s responsibilities under the system and how to appropriately interact with the system; and take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of the Act.

Labor Code §402.072(a) states that the Division may impose sanctions against any person regulated by the Division under the Act.

Labor Code §402.073(b) states that in a case in which a hearing is conducted by the State Office of Administrative Hearings under Labor Code §413.031 or Labor Code §413.055, the administrative law judge who conducts the hearing for the SOAH shall enter the final decision in the case after completion of the hearing.

Labor Code §402.073(c) states that in a case in which a hearing is conducted in conjunction with Labor Code §§402.072, 407.046, 408.023, or 415.034, and in other cases under this subtitle that are not subject to Labor Code §402.073(b), the ALJ who conducts the hearing for the SOAH shall propose a decision to the Commissioner for final consideration and decision by the Commissioner.

Labor Code §402.074 requires the Division to effectively implement statutory goals and the standards and requirements adopted under Labor Code, Title 5.

Labor Code §414.003 requires the Division to compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under Labor Code, Chapter 414, that violate the Act, Division rules, or an order or decision of the Commissioner, or otherwise adversely affects the workers’ compensation system of this state.

Labor Code §414.004 requires the Division to regularly review the workers’ compensation records of insurance carriers to ensure compliance with the Act. Insurance carriers, their agents, and those with whom the insurance carrier has contracted with to provide, review, or monitor services under the Act are required by this statute to cooperate with the Division, make available to the Division any records or other information, and allow the Division access to the information at reasonable times at the person’s offices.

Labor Code §414.005 states that the Division shall maintain an investigation unit to conduct investigations relating to alleged violations of the Act, Commissioner rules, or a Commissioner order.
or decision, with particular emphasis on violations of Chapters 415 and 416. As often as the Commissioner considers necessary, the Commissioner or the investigation unit may review the operations of a person regulated by the Division, including an agent of the person performing functions regulated by the Division, to determine compliance with the Act. The review described by subsection (b) of this statute may include on-site visits to the person's premises. The Commissioner is not required to announce an on-site visit in advance. During an on-site visit, a person regulated by the Division shall make available to the Division all records relating to the person's participation in the workers' compensation system. The Commissioner is required to adopt rules that prescribe the procedures to be used for both announced and unannounced on-site visits authorized under this section, including specifying the records subject to inspection.

Labor Code §415.0211 provides the procedures for the issuance of an exparte emergency cease and desist order and criteria by which the order may be issued.

Labor Code §415.034 states that on request of the charged party or the Commissioner, the SOAH shall set a hearing and the hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code.


§180.1 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

(1) [41] Accident Prevention Services Inspection—An inspection under Chapter 416 under this title (relating to Workers' Health and Safety Accident Prevention Services) that focuses on insurance carrier's duties to provide accident prevention services under Labor Code Chapter 411, Subchapter E and division rules.

(2) [43] Administrative violation—A violation, failure to comply with, or refusal to comply with the Act, or a rule, order, or decision of the commissioner. This term is synonymous with the terms "violation" or "violate."

(3) [44] Agent—A person with whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent.

(4) [45] Appropriate credentials—The certification(s), education, training, and experience to provide the health care that an injured employee is receiving or is requesting to receive.

(5) [46] Audit Violations—Violations discovered through a census or statistical sampling of the alleged violator.

(6) [47] Commissioner—The commissioner of workers' compensation.

(7) [48] Complaint—A written submission to the division alleging a violation of the Act or rules by a system participant.

(9) [49] Department—Texas Department of Insurance.

(10) [50] Division—Texas Department of Insurance, Division of Workers’ Compensation.

(11) [51] Emergency—As defined in §133.2 of this title (relating to Definitions). This definition does not apply to “emergency” as used in the term “ex parte emergency cease and desist orders.”

(12) [52] Frivolous—That which does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(13) [53] Frivolous complaint—A complaint that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(14) [54] Immediate post-injury medical care—That health care provided on the date that the injured employee first seeks medical attention for the workers’ compensation injury.

(15) [55] Notice of Violation (NOV)—A notice issued to a system participant by the division when the division has found that the system participant has committed an administrative violation and
the division seeks to impose a sanction in accordance with Labor Code, Title 5 or division rules.

(16) [§180.3] Peer Review--An administrative review by a health care provider performed at the insurance carrier’s request without a physical examination of the injured employee.

(17) [§180.3] Remuneration--Any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, including, but not limited to, forgiveness of debt.

(18) [§180.3] Rules--(c) The division’s rules adopted under Labor Code, Title 5.

(19) [§180.3] Sanction--(1) A penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, injured employee, employer, or health care provider, or any other person regulated by the division under the Act, for an administrative violation.

(20) [§180.3] SOAH--The State Office of Administrative Hearings.

(21) System Participant--A person or their agent subject to the Act or a rule, order, or decision of the commissioner.

§180.3. Compliance Audits.

(a) The division shall conduct Compliance Audits of the workers’ compensation records of system participants and their agents for compliance with the Act and division rules.

(b) The division may conduct a compliance [such] audit at the offices of a system participant,[an agent] or at any location the division deems appropriate. During a compliance [an] audit, the division may, at its discretion, utilize persons in addition to division staff to provide additional expertise.

(c) The division shall provide reasonable notice in advance of a compliance [any] audit. That notice shall:

(1) be in writing;

(2) be sent at least 10 calendar days before the compliance audit is to be performed;

(3) specify the information that must be made available;

(4) list the name and telephone number of the audit coordinator; and

(5) specify the date, time, location, and conditions of the compliance audit.

(d) The system participant being audited (auditee) shall designate a general contact person and a contact person at each relevant location to coordinate the compliance audit. That contact person shall:

(1) provide reasonable access to requested personnel and information;

(2) respond to reasonable needs of auditors on-site [on-site] or to inquiries by auditors; and

(3) be familiar with the system participant’s procedures and recordkeeping systems related to the scope of the compliance audit.

(e) System participants (which may include those who are not being audited but whose records are necessary to conduct an audit of another system participant), upon request, shall make available for review claim files and other workers’ compensation records in the format and manner specified by the division.

(f) Initial findings of the compliance audit will be provided in writing to the auditee.

(g) The auditee may prepare and file with the division a management response to the initial findings. The response may include proposed corrective actions. If such a response is provided, the division shall review the response and shall adjust its findings if deemed appropriate.

(h) Final compliance audit reports may be published on the division’s Internet website and shall be redacted to not include any confidential claim file information. [and shall remain on the division’s website until a subsequent audit has taken place. The division may, at its discretion, delay publishing the final audit report until a follow-up audit is performed and, should the subsequent audit find the auditee to have achieved standards, may choose to only publish the subsequent audit report. Such a delay will not be considered if the auditee fails to submit a management response that identifies appropriate corrective actions to be taken to achieve standards.]

(i) The division, should it deem it appropriate or upon request of a licensing or certification authority, shall provide the appropriate licensing or certification authority with a copy of all final compliance audit reports (redacted in accordance with subsection (h) of this sub-section) and the auditee’s response to the final compliance audit report, if any.

(j) To the extent permitted by the Act and division rules [or rule], the division shall submit a bill to the auditee for the actual expenses associated with the compliance audit, including audit staff time, additional expertise, travel and per diem expenses, and copying costs.

(k) The auditee shall submit payment by check, made payable to the order of the Texas Department of Insurance, for the expenses within 25 days after receipt of the bill.

§180.4. On-Site Visits.

(a) As often as it considers necessary, the division may review the operations of a system participant to determine compliance with the Act or division rules.

(b) When reviewing the operations of a system participant to determine compliance with the Act or division rules, the division may conduct on-site visits to the system participant’s premises. On-site visits may be announced or unannounced.

(c) The on-site visit will occur during the system participant’s normal business hours.

(d) An on-site visit must not disturb a health care provider’s provision of health care.

(e) The division shall provide written notice of each announced and unannounced on-site visit. This notice shall:

(1) be sent at least 10 calendar days before the on-site visit unless the on-site visit is unannounced in which case the notice will be provided at the time of the on-site visit;

(2) specify the alleged violation(s) that is the subject of the on-site visit;

(3) specify the types of records that must be made available during the on-site visit;

(4) list the name and telephone number of the division staff representative; and

(5) specify the date, time, location, and conditions of the on-site visit.
(f) The person who is the subject of the on-site visit shall designate a general contact person at the premises. During the on-site visit the contact person shall:

(1) provide access to requested personnel and information;
(2) respond to the needs of division staff and to inquiries by division staff; and
(3) be familiar with the system participant’s procedures and recordkeeping systems that are related to the records and information requested during the on-site visit.

(g) During an on-site visit the system participant shall make available to the division in the format and manner specified by the division all records relating to the person’s participation in the workers’ compensation system upon request, including:

(1) claim files;
(2) medical records and reports;
(3) payment records;
(4) billing records;
(5) electronic records;
(6) communications;
(7) adjustor notes;
(8) accident reports;
(9) notifications of lost time;
(10) notifications of injuries;
(11) payroll data and wage statements;
(12) investigative reports;
(13) filed DWC forms; and
(14) contracts.

§180.5 Access to Workers’ Compensation Related Records and Information.

(a) Upon written request from the division [commission] any system participant [person subject to monitoring or review by the commission] shall provide copies of or access to all records and information held by that system participant [person] related to issues being reviewed or investigated in the format and manner specified by the division.

(b) The request will identify the records and information [as documents] to be produced[!] and will provide a specific, reasonable date to produce the information.

§180.8 Notices of Violation; Notices of Hearing; Default Judgments.

(a) A notice of violation (NOV) is a notice issued to a system participant when the division finds that the system participant has committed an administrative violation and the division seeks to impose a sanction under the Act or division rules. A NOV is not required to be issued before or after the issuance of an ex parte emergency cease and desist order.

(b) A NOV shall be in writing and include:

(1) the provision(s) of the Act, rule, order, or decision of the commissioner that the system participant violated;
(2) a summary of the facts that establish that the violation(s) occurred;
(3) a description of the proposed sanction that the division intends to impose;
(4) the right to consent to the charge and the proposed sanction(s);
(5) the right to request a hearing; and
(6) other information about the rights, obligations, and procedures for requesting a hearing.

(c) The charged party shall file a written answer to the NOV not later than the twentieth day after the day the notice is received. The answer shall either consent to the proposed sanction, and remit the amount of the penalty, if any, or request a hearing by being filed with the division’s [commission’s] chief clerk of proceedings. If the charged party fails to respond to the NOV within 20 days of receipt of the notice, the division shall schedule a hearing at the State Office of Administrative Hearings (SOAH) [SOAH] and provide notice of hearing to the charged party that meets the requirements of §148.5 of this title (relating to Notice of Hearing).

(d) A charged party that receives a notice of hearing under subsection (c) of this section shall, within 20 days of the date on which the notice of hearing is provided to the party, file a written answer or other responsive pleading. Such response shall be filed in accordance with 1 TAC §155.101 (relating to Filing Documents) and §155.103 (relating to Service of Documents on Parties).

(e) For purposes of this section, events described in paragraphs (1) or (2) of this subsection constitute a default on the part of a charged party who receives a notice of hearing under subsection (c) of this section:

(1) failure of the charged party to file a written response as provided by subsection (d) of this section; or
(2) failure of the charged party to appear in person or by legal representative on the day and at the time set for hearing in a contested case at SOAH, regardless of whether a written response has been filed.

(f) In the event that a charged party defaults as described by subsection (e) of this section, the division may seek informal disposition by default by the commissioner [entity having the final decision making power] as permitted by Government Code §2001.056.

(g) For purposes of this subchapter, "disposition by default" shall mean the issuance of an order against the charged party in which the allegations against the party in the notice of hearing are deemed admitted as true, upon the offer of proof to the commissioner [entity having the final decision making power] that proper notice was provided to the defaulting party. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code §2001.051 and §2001.052 and §148.5 of this title [relating to Notice of Hearing].

(h) After informal disposition of a contested case by default, a charged party may file a written motion to set aside the default order and reopen the record. A motion by the charged party to set aside the default order and reopen the record shall be granted by the commissioner if the charged party establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident. A motion to set aside the default order and reopen the record shall be filed by the charged party with the division’s chief clerk of proceedings prior to the time that the order of the commissioner becomes final pursuant to the applicable provisions of Government Code, Chapter 2001, Subchapter F [entity having the final decision making power].

(i) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. A motion for rehearing is required in order to
exhaust administrative remedies. The filing of a motion to set aside the
default order and reopen the record has no effect on either the statutory
time periods for the filing of a motion for rehearing or on the time
period for ruling on a motion for rehearing, as provided in applicable

§180.9. Proposals for Decision.

(a) If a hearing was conducted in conjunction with Labor Code
§§407.046, 408.023, 415.0215, or 415.034, or in another case under the
Act that is not subject to Labor Code §402.073(b), the commissioner
shall review the proposed decision of the administrative law judge. If
the commissioner modifies, amends, or changes a recommended finding
of fact or conclusion of law, or order of the administrative law
judge, the commissioner’s final order shall state the legal basis and the
specific reasons for the change.

(b) The division shall notify the person by issuing an order that
describes the effects of the sanction. This order shall be delivered by
verifiable means with a copy to the appropriate licensing or certification
authority.

(c) Failure to comply with the sanction may result in additional
administrative violations.

§180.10. Ex Parte Emergency Cease and Desist Orders.

(a) The commissioner ex parte may issue an emergency cease
and desist order if:

(1) the commissioner believes a person regulated by the di-
vision under Labor Code, Title 5 is engaging in conduct violating a law,
rule or order; and

(2) the commissioner believes that the alleged conduct un-
der paragraph (1) of this subsection will result in harm to the health,
safety, or welfare of another person.

(b) The order must contain the following information:

(1) the name and last known address of the person against
whom the order is entered;

(2) the alleged conduct that the commissioner believes the
person regulated by the division under Labor Code, Title 5 is engaging
in that is a violation of a law, rule, or order and that the commissioner
believes will result in harm to the health, safety, or welfare of another
person;

(3) a statement that the person is to immediately cease and
desist from the acts, methods, or practices stated in the order;

(4) the rights of the person against whom the order is en-
tered with regard to requesting a hearing to contest the order. (This
statement must include a reference to the specific statute, rule, or order
found to have been violated, a statement of the legal authority and ju-
risdiction under which the order is issued, specific reference to the time
limit for requesting a hearing to contest the order, and reference to the
statute or statutes in which the time limit is contained. This statement
must include the fact that the burden of requesting the hearing is on the
person against whom the order was entered);

(5) a statement that the order is final on the 31st day after
the date the affected person receives the order unless the affected person
requests a hearing; and

(6) a statement regarding the actions that may be taken or
sanctions that may be imposed against the person against whom the
order was entered in the event of violation of the order.

(c) A request for a hearing to contest the order must be re-
quested not later than the 30th day after the date the person receives
the order and must:

(1) be in writing;

(2) be directed to the commissioner and filed with the divi-
sion’s chief clerk of proceedings; and

(3) state the grounds for the request to set aside or modify
the order.

(d) On receiving a request for a hearing the division shall serve
notice of the time and place of the hearing at the State Office of Ad-
ministrative Hearings (SOAH). The hearing shall be held not later than
the 10th day after the date the commissioner receives the request for a
hearing unless the parties mutually agree to a later hearing date. At the
hearing, the burden of proof is on the person requesting the hearing to
show cause why the order should not be affirmed.

(e) Agreements to hold the hearing at a later date must be in
writing. The person who is adversely affected by the issuance of the
ex parte emergency cease and desist order and who desires a hearing
regarding such order must file any such agreement with the division’s
chief clerk of proceedings before the expiration of the 10th day after
the date the request for hearing is received.

(f) Following receipt of the proposal for decision from SOAH
regarding the hearing the commissioner shall review the proposed deci-
sion of the administrative law judge and wholly or partly affirm, modi-
fy, or set aside the order. If the commissioner modifies, amends, or
changes a recommended finding of fact or conclusion of law, or order
of the administrative law judge, the commissioner’s final order shall
state the legal basis and the specific reasons for the change.

(g) Pending a hearing, the order continues in effect unless the
order is stayed by the commissioner.

(h) If the person against whom the order was entered submits
a motion for stay of the ex parte emergency cease and desist order, the
motion may be granted by the commissioner before the date of the show
cause hearing. If the parties agree to a later show cause hearing date
pursuant to subsection (d) of this section, the motion for stay may be
granted by the commissioner before the date of the show cause hearing
upon written motion by any party to the hearing. If the motion for stay
is granted, notice shall be sent to the requesting party that the order has
been stayed in whole or in part and what part of the order continues to
be in effect. If the motion is not granted before the date of the show
cause hearing the motion is denied and notice is not required of the
denial.

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 September 12,
2011.
TRD-201103707
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation

Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 804-4703

SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §180.27
The amendments are proposed under Labor Code §§402.00111, 402.00116(a) and (b), 402.00128(b), and 402.061.

Labor Code §402.00111 provides that except as otherwise provided by Labor Code, Title 5, the Commissioner of Workers’ Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5.

Labor Code §402.00116(a) provides that the Commissioner is the Division’s chief executive and administrative office and shall administer and enforce Labor Code, Title 5, other workers’ compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or the Commissioner.

Labor Code §402.00116(b) provides that the Commissioner has the powers and duties vested in the Division by Labor Code, Title 5 and other workers’ compensation laws of this state.

Labor Code §402.00128(b) provides that the Commissioner or the Commissioner’s designee may investigate misconduct; hold hearings; issue subpoenas to compel the attendance of witnesses and the production of documents; administer oaths; take testimony directly or by deposition or interrogatory; assess and enforce penalties established under this title; enter the Division’s name in the Division’s name to enjoin the violation of Labor Code, Title 5; initiate an action under Labor Code §410.254 to intervene in a judicial proceeding; prescribe the form, manner, and procedure for the transmission of information to the Division; correct clerical errors in the entry of orders; and exercise other powers and perform other duties as necessary to implement and enforce Labor Code, Title 5. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of the Act.

The following statute is affected by this proposal: §180.27 - Labor Code §402.00111.

§180.27. [Sanctions Process/Appeals] Restoration.

(a) [44] If a hearing was conducted in conjunction with Labor Code §§402.072, 407.046, 408.023, and in other cases under the Act that are not subject to Labor Code §402.073(b), the commissioner shall review the proposed decision of the administrative law judge (ALJ). If the commissioner modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the ALJ, the commissioner’s final order shall state the legal basis and the specific reasons for the change.

(b) The division shall notify the person by issuing an order that describes the effects of the sanction. This order shall be delivered by verifiable means with a copy to the appropriate licensing or certification authority and, if the sanction is against a doctor, copies shall be delivered to those injured employees the division is aware are being treated by that doctor.

(c) Failure to comply with the sanction may result in further sanctioning by the division.

(a) [44] In accordance with Labor Code §408.0231(d)(2) a doctor, other than a doctor to which Labor Code §408.0231(r) applies, may apply for the restoration of a doctor privilege removed under Labor Code §408.0231 by sending a letter of consideration to the Medical Advisor.

(b) [44] The request shall be evaluated by the Medical Advisor and/or members of the Medical Quality Review Panel. The requestor shall be liable for the cost of the review, which may include an audit of the records of the requestor.

(1) [44] If, in the Medical Advisor’s opinion, the doctor:

(A) [44] has all the appropriate unrestricted licenses/certifications;

(B) [44] has overcome the conditions that resulted in the sanction;

(C) [44] meets all the division’s qualification standards and conditions for restoration of some or all of the practice privileges removed; and

(D) [44] is not out of compliance with the Labor Code, Insurance Code, a department rule, or rule, order, or decision of the commissioner the Medical Advisor may recommend that the commissioner lift the sanction(s) or restore some or all of the privileges removed or restricted by the sanction(s).

(2) [44] If in the Medical Advisor’s opinion, the doctor has not met all the requirements for restoration of privileges, the Medical Advisor shall notify the doctor by verifiable means of the intent to recommend to the commissioner that the sanctions not be lifted or that the privileges removed or restricted by the sanction(s) not be restored in whole or in part and the reasons for that recommendation. Within 15 days after receiving the notice, a doctor may file a response that addresses the reasons given in the recommendation to deny lifting the sanction(s) or restoration of some or all of the privileges removed or restricted by the sanction(s). The Medical Advisor shall review the response and make a final recommendation to the commissioner. A copy of the requestor’s response to the division shall be provided to the commissioner for consideration.

(e) [44] The commissioner shall consider the matter and shall notify the requestor of the final decision by verifiable means, and may send a copy to the appropriate licensing or certification authority. If the commissioner does not lift the sanction, the commissioner may include in the final decision the conditions that the doctor must meet before the division will reconsider lifting the sanctions including, but not limited to, the amount of time that the doctor must wait prior to re-requesting lifting the sanction(s) or restoration of some or all of the privileges removed or restricted by the sanction(s).

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

Filed with the Office of the Secretary of State on September 12, 2011.

TRD-201103708
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation
Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 804-4703

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 9. PROPERTY TAX ADMINISTRATION
SUBCHAPTER A. PRACTICE AND PROCEDURE

PROPOSED RULES  September 23, 2011  36 TexReg 6247
The Comptroller of Public Accounts proposes the repeal of §9.105, concerning tax refund for economic development. The proposed repeal implements Senate Bill 1, Article 3, 82nd Legislature, 1st Called Session, 2011, effective October 1, 2011. The proposed repeal does not affect an eligible person’s right to claim a refund of state sales and use and state franchise taxes that was established under Tax Code, §111.301 in relation to taxes paid before October 1, 2011 in a calendar year for which the person paid ad valorem taxes to a school district as provided by Tax Code, §111.301 before October 1, 2011. An eligible person’s right to claim a refund of state sales and use and state franchise taxes that was established under Tax Code, §111.301 in relation to taxes paid before October 1, 2011 in a calendar year for which the person paid ad valorem taxes to a school district as provided by Tax Code, §111.301 before October 1, 2011 is governed by the law in effect on the date the right to claim the refund was established, and the rule is continued in effect for that purpose.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property taxation. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the repeal may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78771-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The repeal is proposed pursuant to Senate Bill 1, Article 3, 82nd Legislature, 1st Called Session, 2011, which repeals Tax Code, Chapter 111, Subchapter F.

The repeal implements Senate Bill 1, Article 3, 82nd Legislature, 1st Called Session, 2011.


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

Filed with the Office of the Secretary of State on September 12, 2011.

TRD-201103697
Ashley Harden
General Counsel
Comptroller of Public Accounts

Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 475-0387

36 TexReg 6248  September 23, 2011  Texas Register
Ashley Harden
General Counsel
Comptroller of Public Accounts

Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 475-0387

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3060

The Comptroller of Public Accounts proposes an amendment to §9.3060, concerning installment payment of taxes on property located within a disaster area. This amendment is being proposed to delete language that was amended by Senate Bill 432, 82nd Legislature, 2011, effective September 1, 2011, changing the penalty for failure to make a payment before the applicable deadline pursuant to Tax Code, §31.032(b). This section is also being amended to add language regarding the limit on gross receipts under Tax Code, §31.032(a)(1)(A)(ii) as provided by Tax Code, §31.032(h) and to delete language that merely duplicates language set forth in the Tax Code.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. 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 Tax Code, §31.032(f), which provides for the comptroller to adopt rules to implement Tax Code, §31.032.

This section implements Tax Code, §31.032(f).

§9.3060. Installment Payment of Taxes on Property Located Within a Disaster Area.

(a) Any notice under Tax Code, §31.032(b) shall be in writing. [Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]

(1) Disaster—The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill, or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency.

(2) Disaster area—An area declared to be a disaster area by the governor of the state of Texas, or an area declared a disaster area by the president of the United States under 42 United States Code, §5111.

(b) The limit on gross receipts under Tax Code, §31.032(a)(1)(A)(ii) as provided by Tax Code, §31.032(h) will be published on the comptroller’s website. [Qualifications for installment payments. A person who owns any real property that consists of fewer than five living units; is the owner’s residence homestead or is used for residential purposes; is both located in a disaster area and was damaged as a direct result of the disaster; and had taxes imposed on that property by a taxing unit before the first anniversary of the disaster area declaration, may pay the taxes so imposed in installments.]

[(c) Written notice of installment payments. If, before the delinquency date, a person pays at least one-fourth of the taxes so imposed and gives a written notice to the taxing unit that they will pay the remaining taxes in installments, the person may pay the remaining taxes without penalty or interest in three equal installments. The first of these installments must be paid before April 1, the second before June 1, and the third before August 1. If the delinquency date for taxes to which this subsection applies is postponed to May 1 or a later date, the tax assessor-collector shall extend each installment deadline provided by this subsection by the number of months that the delinquency date was postponed.]

[(d) Failure to timely pay. Should the person fail to timely make an installment payment before the applicable date provided by subsection (e) of this section, the unpaid amount is delinquent. A penalty of 12% and interest assessments as provided by Tax Code, §33.01(c), shall thereafter be due and owing.]

[(e) Prepayment of taxes due. A person may pay more than the amount due for each installment and any amount paid in excess of the amount due shall be credited to the next, pending installment. A person may not pay less than the total amount due for each installment unless the tax assessor-collector provides for the acceptance of partial payments as authorized by the Tax Code, §31.032. If the collector accepts a partial payment, penalty and interest assessments will be incurred only on the unpaid amount due on the applicable date provided by subsection (e) of this section.]

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

Filed with the Office of the Secretary of State on September 12, 2011.

TRD-201103696
Ashley Harden
General Counsel
Comptroller of Public Accounts

Earliest possible date of adoption: October 23, 2011
For further information, please call: (512) 475-0387

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 208. EMPLOYMENT PRACTICES

SUBCHAPTER C. EMPLOYEE TRAINING AND EDUCATION

The Texas Department of Motor Vehicles (department) proposes the repeal of §208.42 and §208.44, concerning Definitions and
Particular Programs, respectively, and amendments to §208.43, concerning General Standards. All sections concern Subchapter C, Employee Training and Education.

EXPLANATION OF PROPOSED REPEALS AND AMENDMENTS

The repeals and amendments are necessary to simplify the department's training and education program. House Bill 3097, 81st Legislature, Regular Session, 2009, created the Texas Department of Motor Vehicles (department) from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation (TxDOT). The current rules were adapted from the TxDOT program. The department employs approximately 600 employees compared to TxDOT's approximately 12,000 employees and has fewer types of classifications. The repeals and amendments streamline the employee education program.

The repeal of §208.42 removes the definitions. The defined terms are no longer used in amended §208.43.

Section 208.44 provides for a job-related degree program and a non-job-related degree program. The repeal of §208.44 removes particular programs. The department will not limit the types of courses that can be taken as long as the courses fit within the statutory authority of Government Code, Chapter 656.

Amendments to §208.43 add that the employee must be employed for one year at the time of application. The current verbiage states that an employee must be in good standing. This wording is replaced with the clarification that the employee must not have any disciplinary actions during the six months prior to application or during the program. The amendments also add a requirement that the employee sign a commitment to employment for six months, to begin the month following reimbursement.

Requirements regarding the type of educational institution attended are removed. However, the department may limit reimbursement to mandatory fees and tuition in an amount equal to the latest average semester hour cost for Texas public colleges and universities, as reported by the Texas Higher Education Coordinating Board, in order to allow the department to create and maintain a sustainable program within its budget.

The program participants must provide the department with grade reports or a transcript and an itemized statement of tuition and fees in order to be reimbursed.

The requirements regarding repayment are deleted because the program has been changed to a reimbursement program. Since the program participant will not receive reimbursement until after the course has been passed, there is no need for repayment. The streamlining of the program process allows the department to eliminate the requirement for an educational contract and a service commitment with the program participant.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the repeals and amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals and amendments.

Dawn Heikkla, Chief Operating Officer, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and amendments.

PUBLIC BENEFIT AND COST

Ms. Heikkla has also determined that for each year of the first five years the repeals and amendments are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and amendments will be to continue encouraging employees to seek educational opportunities that will materially aid and effectively improve state administration. There are no anticipated economic costs for persons required to comply with the repeals and amendments. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the repeals and amendments may be submitted to Dawn Heikkla, Chief Operating Officer, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on October 24, 2011.

43 TAC §208.42, §208.44

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §1002.001, and Government Code, Chapter 656, Subchapter C.

§208.42. Definitions.

§208.44. Particular Programs.

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 September 12, 2011.

TRD-201103709

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 23, 2011

For further information, please call: (512) 467-3853

43 TAC §208.43

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE
Transportation Code, §1002.001, and Government Code, Chapter 656, Subchapter C.

§208.43. General Standards.

(a) Applicability. This section establishes standards applicable to all assistance to program participants unless different standards are established for a particular program as described in §208.44 of this subchapter (relating to Particular Programs).

(b) Eligibility and Reimbursement. An employee must meet the following requirements to be eligible for an assistance program. The employee must:

(1) be an employee who has been continuously employed for one year at the time of application. [Summer employees and temporary recruitment program employees are ineligible, except for the non-degree program.]

(2) maintain satisfactory job performance. [The employee must be in good standing with the department.]

(3) not have any disciplinary action during the six months prior to applying or during the program, and the employee must complete an assistance agreement setting forth the conditions of assistance, including the amount of assistance, the requirements of continued eligibility, and the employee's repayment responsibilities.

(4) sign a commitment to employment for six months to begin the month following reimbursement.

(c) Scope of assistance.

(1) Eligible expenses. [Type of institution.]

(A) The department may pay the cost of fees on a per-hour basis, in an amount equal to the latest average semester hour cost for Texas public colleges and universities, as reported by the Texas Higher Education Coordinating Board. The participant will be responsible for paying the difference in cost. [Assistance will be authorized only for courses and degrees earned through an institution.]

(B) The department may provide reimbursement for mandatory fees. [All courses, whether offered in person, through correspondence, or over the internet, must be taken if possible from a public institution in Texas.]

[(C) If an employee is enrolled in a degree program in a private institution in Texas, the employee must earn the same number of credits as possible at a Texas public institution if that will reduce the amount of required assistance. Courses, whether offered in person, through correspondence, or over the internet, may be taken from a Texas private institution only if:

[(i)] the public institution offers a comparable course that can reasonably be attended by the employee during non-duty hours;

[(ii)] the public institution offers the approved courses or degree;

[(iii)] the employee cannot meet the admission requirements of a public institution;

[(iv)] the completion of the degree or course at a private institution would cost less than at a public institution; or

[(v)] the employee agrees the department will only provide the amount of assistance that would have been required if the employee had attended a public institution.]

[(D) An employee may take a correspondence course or an internet course offered by an out-of-state institution only if the course is not available from any private or public institution in Texas, whether in person, as a correspondence course, or over the internet.]

(2) Eligible expenses. The following expenses are eligible for financial assistance:

[(A) Tuition.]

[(B) College Level Equivalency Program exams or similar exams if they relate to a course that is part of the employee's approved degree plan and if the employee scores high enough to receive college credit or a waiver of course requirements.]

[(C) Life experience assessments for which the employee obtains a credit if the credit is part of the employee's approved degree plan; and]

[(D) Reimbursed fees and books.]

(2) Use of state property. A program participant may not use duty hours for attending classes, studying, or other activities associated with the program. A program participant may use state equipment for activities related to coursework with supervisor approval. An employee participating in a program may use the department's self-service copy machines, typewriters, calculators, copy paper, and microcomputers to complete course assignments during non-duty hours and when use does not interfere with the department's business.

(3) [4] Retaken courses. The department will not reimburse a program participant for a course taken more than once. [Any expenses incurred to retake a course or to take a substitute for a failed course unless the department has been reimbursed for the cost of the failed course.]

(d) Conditions of reimbursement [participation].

(1) Within four weeks of receipt of grades, a program participant shall provide the department with: [Grade verification. Each semester an employee shall provide grade reports to the employee's executive officer to verify that the employee received full credit for all courses.]

[(A) A passing grade report or transcript verifying the passing course credit; and]

[(B) An itemized statement of tuition and mandatory fees.]

(2) The department may require an employee to reimburse the department for tuition if the employee does not complete the employment commitment. [Outside aid. An employee shall provide receipts for all fees and shall promptly report any outside funds received. The department will deduct any amounts received by the employee through grants, scholarships, or other financial aid from the assistance provided to the employee.]

(3) The Executive Director shall adopt policies related to education and training for employees.

[(2) Suspension.]

[(A) The employee's executive officer may suspend an employee for any of the following reasons:]

[(i)] Participation may be suspended indefinitely if an employee is placed on disciplinary probation.

[(ii)] Participation may be suspended indefinitely if the employee does not meet any obligation or does not maintain eligibility; or if the employee's executive officer determines that the employee's participation in an assistance program adversely affects the employee's job performance.]
An employee’s participation may be suspended based on extraordinary work requirements as determined by the employee’s executive officer.

Suspension will not be considered a failure to remain active in the program.

An employee shall agree to work for the department in return for assistance. This service requirement shall begin 30 days after the date the employee receives the degree if the employee meets all conditions of employment and eligibility at that time.

Repayment.

Circumstances requiring repayment.

An employee who voluntarily withdraws from an assistance program or who separates from department employment before participating in an assistance program shall repay all assistance provided by the department for courses taken under the assistance agreement.

An employee who does not meet all conditions of employment and eligibility during a service requirement or who does not complete a service requirement in its entirety shall repay all assistance provided by the department. Repayment shall not be prorated or reduced because a portion of a service requirement has been fulfilled.

Failure to pass course. An employee who does not pass a course must repay funds provided by the department for that course. If the employee repays the department for the course, the employee may continue in the program. If the employee does not repay the department for the course, no additional assistance will be provided. An employee in a continuing program must repay the debt before the next semester to continue participation in the assistance program.

Repayment schedule. The executive officer will establish a repayment schedule. Employees shall follow the repayment schedule set by the department. The repayment schedule will consist of:

up to 60 equal monthly installments beginning 90 days after employment or participation ceases; and

minimum installments of no less than $20 based on the employee’s ability to repay and the amount owed.

Costs of collection. An employee is liable to the department for any reasonable expense incurred in obtaining payment, including reasonable attorney’s fees.

Credit agencies. The department may notify credit agencies if an employee does not repay the department.

Cancellation.

Grounds. The department will cancel an employee’s participation if the employee:

withdraws from the approved institution;

is removed or prohibited from attending the approved institution;

does not comply with any term of the assistance agreement; or

terminated from the department while participating in a program or before completion of a service requirement.

Resumption of eligibility. If the department cancels an employee’s participation, the employee will no longer be eligible for assistance unless the employee has fully repaid the department and:

the employee demonstrates that the cancellation resulted from hardship; or

two years have elapsed since the employee’s participation was canceled.

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 September 12, 2011.

TRD-201103710

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 23, 2011

For further information, please call: (512) 467-3853
TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §§55.116, 55.118 - 55.120

The Office of the Attorney General, Child Support Division adopts amendments to 1 TAC §§55.116 and 55.118 - 55.120, regarding forms for child support enforcement. The amended sections are adopted without changes to the proposed text as published in the August 5, 2011, issue of the Texas Register (36 TexReg 4871) and will not be republished. The adopted sections reflect federal revisions to forms used by state Title IV-D agencies.

The purpose of the amendments is to provide forms authorized by state and federal statutes and forms used by the Office of the Attorney General, Child Support Division.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §158.106, which authorizes the Office of the Attorney General to prescribe forms for the collection of child support.

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 September 6, 2011.

TRD-201103661

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Effective date: September 26, 2011
Proposal publication date: August 5, 2011

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER M. IMPLEMENTATION OF THE MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT

1 TAC §81.420

The Office of the Secretary of State, Elections Division, adopts new §81.420, concerning the modification and adjustment of election dates and deadlines necessary to ensure compliance with the federal Military and Overseas Voter Empowerment ("MOVE") Act, Pub. L. No. 111-84, 123 Stat. 2190 (2009). The rule is adopted with changes to the text as proposed in the July 29, 2011, issue of the Texas Register (36 TexReg 4759) and will be republished.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Comment: Mr. Rob Lapham, Executive Director, Libertarian Party of Texas, expressed a concern about the explanatory wording describing paragraph (3) of the proposed rule. He believed there was an implication in that language that the opening date for minor parties to begin circulation of their ballot access petitions was being shifted back in addition to the deadline to file the petitions.

Response: The Secretary of State has reviewed Mr. Lapham's concerns and withdrawn the language in paragraph (3) of the proposed rule.

Comment: Mr. Lapham and Mr. Tom Glass, Member, State Libertarian Party Executive Committee, disagreed with the change in filing period for minor parties contained in paragraph (2) of the proposed rule. They suggested the Secretary of State's general rulemaking authority under Senate Bill 100 does not extend to this issue because there is no conflict in the law.

Response: The Secretary of State has reviewed Mr. Lapham and Mr. Glass' concerns and withdrawn the language in paragraph (2) of the proposed rule.

Comment: Mr. Glass protests the inclusion of paragraph (3) of the proposed rule on the ground Senate Bill 100 only concerns the dates and processes of parties electing their candidates by primary election rather than parties that nominate candidates by conventions and that the unamended supplemental petition deadlines should remain the same for parties without ballot access. He also notes that the rule as proposed would place the date by which parties submit their supplemental petitions to the Secretary of State after the date of the state conventions, resulting in a party perhaps not knowing its ballot access status at the time the convention is held.
Response: As noted in the previous response, the Secretary of State has withdrawn the language in paragraph (3) of the proposed rule.

Comment: Melinda Nickless, Professional Election Consultant, noted Sections 31 and 33 of Senate Bill 100 create a potential discrepancy between the primary ballot certification deadline for state party chairs and certain extended filing deadlines. The chairs are required to deliver the certification by the 81st day before general primary election day. The 79th day before general primary election day is the extended candidate filing deadline under §172.054 of the Code. Section 172.054 provides for an extended filing period for situations in which a primary candidate dies, an incumbent candidate withdraws, or the sole candidate for an office on the primary ballot withdraws or is declared ineligible.

Response: The Secretary of State has added paragraph (4) to the rule to address this situation. The extended filing deadline is adjusted to the 5th day after the regular primary filing deadline. The withdrawal, death, or declaration of ineligibility must have occurred by the 1st day after the regular filing deadline. The changes are intended to preserve the point at which the primary ballot is finalized to allow ballot printing to begin, while also providing for a brief filing period if necessary under §172.054(b) of the Code. These changes are needed to correct a discrepancy enacted by the 82nd Legislature in Senate Bill 100, which controls over any other legislative changes enacted during that Session, but such changes are consistent with those made in House Bill 2817 also enacted by the 82nd Legislature.

The new rule is adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws and Act of May 31, 2011, 82nd Leg., R.S., Chapter 1318, §50.

§81.420. Modifications of Election Dates and Procedures under Senate Bill 100 and the MOVE Act.
The Office of Secretary of State issues the following clarifications and adjustments to election procedures and deadlines pursuant to Act of May 31, 2011, 82nd Leg., R.S., Chapter 1318, §50. The changes are effective upon pre clearance by the United States Department of Justice of Senate Bill 100 under the Voting Rights Act.

(1) Notwithstanding any requirement under general or special law that the general election of a political subdivision shall be held on the May uniform election date in even-numbered years, §41.0052(a), Texas Election Code, authorizes the governing body of all political subdivisions holding general elections on the May uniform election date in even-numbered years to order a change in the date of the general election to another uniform election date under §41.001(a) of the Code as necessary to provide access to county election equipment and services.

(2) The primary withdrawal deadline for the 2012 election year is the 79th day before the general primary election day. The primary withdrawal deadline enacted in §34 of House Bill 2817, Chapter 1164, 82nd Legislature, 2011, directly conflicts with the deadline enacted in §35 of Senate Bill 100, Chapter 1318, 82nd Legislature, 2011. Per §49 of Senate Bill 100, provisions contained in Senate Bill 100 enacted at the same session prevail to the extent of any conflict.

(3) Notwithstanding §§202.004(a)(2), 202.004(b), and 202.004(c), Texas Election Code, if a vacancy in an office of the state or county government occurs on or before the 5th day before the date of the regular primary filing deadline, the filing deadline for a place on the general primary ballot for the office is 6:00 p.m. of the 5th day after the regular primary filing deadline.

(4) Notwithstanding §§172.054(b), 172.057 and 172.058, Texas Election Code, the extended filing deadline for a place on the general primary ballot is 6:00 p.m. of the 5th day after the regular primary filing deadline. Notwithstanding §172.054(a), the date by which a candidate death, withdrawal, or declaration of ineligibility must have occurred to trigger the extended filing deadline under §172.054(b) is the 1st day after the regular primary filing deadline.

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 September 9, 2011.

TRD-201103692
John Sepehri
General Counsel
Office of the Secretary of State
Effective date: September 29, 2011
Proposal publication date: July 29, 2011
For further information, please call: (512) 463-5650

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §155.101
The State Office of Administrative Hearings (SOAH) adopts the repeal of §155.101, concerning Filing Documents. The repeal is adopted without changes to the proposed text as published in the March 11, 2011, issue of the Texas Register (36 TexReg 1631).

The existing rule was developed to provide guidance and instructions for filing documents in contested cases at SOAH. Repeal of the existing rule will allow the simultaneous adoption of a new rule, which is being concurrently adopted, to give guidance and instruction on filing documents in contested cases at SOAH using its newly implemented Case Information System (CIS).

No comments to the repeal were received during the 30-day comment period.

The repeal is adopted under Texas Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Texas Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.


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 September 2, 2011.
TRD-201103642
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 22, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 475-4931

1 TAC §155.101

The State Office of Administrative Hearings (SOAH) adopts new §155.101, concerning Filing Documents. The new rule replaces the existing rule, which is being simultaneously repealed. In general, the new rule changes SOAH’s existing rule to include instruction and guidance on how to file documents using SOAH’s newly implemented Case Information System (CIS). New §155.101 is adopted with changes to the proposed text, as published in the March 11, 2011, issue of the Texas Register (36 TexReg 1631).

SOAH received three comments on the proposed new §155.101 during the comment period of March 11, 2011, through April 11, 2011, one of which has been subsequently withdrawn. The pending comments on the proposed new rule were received from the Texas Alcoholic Beverage Commission (TABC) and the Texas Lottery Commission (TLC). A summary of the comments, SOAH’s responses, and any resulting change(s) to the new section follow.

Comments:
TABC inquired whether documents filed confidentially under seal pursuant to new subsection (c)(1) would be maintained in the electronic system.

SOAH’s response:
The reason for the special filing requirements for these documents is to avoid their publication on the electronic case information system (CIS). SOAH has clarified new subsection (a)(3) to expressly state that these documents will not be maintained in the electronic system.

TABC also inquired whether the last sentence in new subsection (a)(3), which authorizes the judge to order filing methods of documents to avoid their inclusion in CIS narrows the broader authorization in the preceding sentence that the judge may “alter the application of this subsection with respect to particular documents or classes of documents as the judge deems appropriate.” Irrespective of this answer, the TABC also asks whether the judge is authorized to require that testimony and exhibits be included in CIS. TABC asks this question in the context of its desire to ensure that the final decision maker at the referring agency can readily ascertain the exact content of the record and easily locate all documents in the record.

SOAH’s response:
The final sentence of new subsection (a)(3) serves as an example of the authority of the judge described in the previous sentence to alter the application of the filing rules with respect to particular documents or classes of documents. It is not intended as a limitation on the judge’s authority. This subsection does authorize the judge, exercising sound discretion in the context of a particular case, to require the inclusion of prefilled testimony and exhibits in CIS. A paper version of written testimony and exhibits will ordinarily be offered at the hearing and, if admitted, would form the official record copy.

SOAH agrees with TABC that it is important to clearly identify the content, location, and format of the official record in each case. Normally, this will include the transcript of the hearing, whether by audio recording or paper transcript, paper copies of the evidence admitted at hearing, and the electronic file containing all pleadings and other filings except for prefilled testimony and exhibits, which will be maintained in paper copy. Each of these will be clearly labeled and indexed for ease of reference by the referring agency and any reviewing court.

Prefilled testimony and exhibits are ordinarily excluded from CIS based on the practical considerations that parties normally file paper copies of these documents, a practice SOAH encourages because judges typically review and mark the paper copies in preparing for the hearing. For user convenience, SOAH allows documents to be filed electronically or by paper copy. While SOAH docketing staff scans in paper copies of other public documents, it would strain SOAH’s resources for SOAH staff to routinely scan in paper copies of prefilled exhibits and testimony, which are frequently voluminous.

TLC urges that the term “personal identifiers” should be defined more specifically as information that identifies an individual, and not corporations, associations, or other legal entities other than individuals. TLC asserts that redaction of taxpayer identification pertaining to business entities other than individuals would be burdensome to it. TLC also accurately observes that corporations have no expectations of privacy with respect to the Federal Freedom of Information Act, (FCC v. AT&T, Inc. 131 S.Ct. 1177, 1181 (U.S. 2011)).

SOAH’s response:
SOAH agrees with this comment for the reasons stated by the commenter. In light of the burden imposed by requiring redaction of the information identified by TLC and because the information is generally treated as public in other contexts, SOAH has revised new subsection (d)(2), as adopted. New subsection (d)(2) now specifies that personal identifiers subject to redaction relate to individuals only, and not to other types of business entities.

SOAH also observes that, contemporaneous with the publication of the proposed new rule on March 11, 2011, the Supreme Court of Texas adopted an order implementing an electronic filing rule, effective March 14, 2011. The Supreme Court order includes similar redaction requirements to those included in the published rule, but also requires redaction of other, financially sensitive, information. Consistent with the Supreme Court Order, the rule as adopted also requires redaction of passport numbers or other similar government-issued personal identification numbers, bank account numbers, credit card numbers, or other financial account numbers.

Finally, with respect to new §155.101, SOAH observes that the Supreme Court of Texas issued a decision impacting the proposed treatment of cases referred under the OAG’s Title IV-D child support program as confidential. See Jackson v. State Office of Administrative Hearings, 2011 Tex. LEXIS 513; 54 Tex. Sup. J. 1443 (2011). New subsection (c)(2) has been modified slightly in accordance with this opinion.

New §155.101 is adopted under Texas Government Code, Chapter 2003, §2003.050, which authorizes the State Office of
Administrative Hearings to conduct contested case hearings and requires adoption of procedural rules for hearings, and Texas Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.


(a) Electronic Case Information System.

(1) Except as otherwise provided in this section, documents relating to cases filed at SOAH and governed by this chapter shall be maintained in SOAH’s electronic Case Information System (CIS). Subject to the exceptions in this chapter, CIS may be accessed through SOAH’s internet home page.

(2) The electronic version of a document maintained in CIS shall be given the same legal status as the originally filed document, without regard to the original means of filing.

(3) Some documents will not be maintained in CIS. These include confidential material filed pursuant to subsection (c)(1) of this section and testimony and exhibits, whether offered at a hearing or filed in advance. Unless otherwise ordered by the judge, paper copies of testimony and exhibits must be filed by mail or hand delivery. The judge may alter the application of this subsection with respect to particular documents or classes of documents as the judge deems proper. The judge may order the method by which documents may be filed at SOAH so they will not be included in CIS.

(4) If technical problems prevent the use of CIS, the chief judge, his or her designee, or the judge in a particular case may establish alternative means of filing or maintaining documents, including the filing and maintenance of the official file in a paper format.

(b) Place for filing original materials.

(1) Contested cases generally.

(A) The original of all pleadings and other documents, except contested cases referred to SOAH by the PUC and the TCEQ, shall be filed with SOAH when it acquires jurisdiction.

(B) Non-confidential pleadings and other public documents that do not contain personal identifiers as described in subsection (d) of this section shall be filed with SOAH by mail addressed to P.O. Box 13025, Austin, Texas 78711-3025; hand delivery to 300 West 15th Street, Room 504; fax to (512) 322-2061; or electronic upload via SOAH’s public website. If the parties are notified that the case has been assigned to a judge in a field office outside Austin, pleadings and other documents shall be filed with the judge at the appropriate field office address. Confidential documents and documents containing personal identifiers must be filed in accordance with subsections (c) and (d) of this section.

(C) With respect to documents filed by mail or hand delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. The time and date of documents filed electronically shall be determined by the time and date of receipt recorded by CIS. Documents received when SOAH is closed shall be deemed filed the next business day. Unless otherwise ordered by the judge, only one copy of any pleading or document shall be filed.

(2) Cases referred by the PUC.

(A) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.

(B) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.

(C) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(3) Cases referred by the TCEQ.

(A) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.

(B) The time and date of filing these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

(C) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.

(D) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

(c) Confidential materials.

(1) Filing of confidential materials in otherwise public dockets. A party filing materials made confidential by law shall file them by delivery of the physical materials in a sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and shall explain the nature of the sealed materials. The outside of the container shall identify the docket number, style of the case, and name of the submitting party, and be marked "CONFIDENTIAL AND UNDER SEAL" in bold print at least one inch in size. Each page of the confidential material shall be marked "confidential." Confidential materials shall not be filed by fax or electronic upload except as provided in paragraph (2) of this subsection.

(2) Filing of materials in cases referred to the Office of the Attorney General and the Comptroller of Public Accounts. Many filings pertaining to cases referred under the Office of the Attorney General’s Title IV-D child support program contain information that is confidential pursuant to Texas Family Code, §231.108 (relating to Confidentiality of Records and Privileged Communications). This includes information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father. Hearings referred by the Comptroller of Public Accounts are confidential pursuant to Texas Government Code, §2003.104 (relating to Confidentiality of Tax Division Information). Filings in these cases may be made pursuant to subsection (b)(1)(B) of this section, including fax or upload via SOAH's public website. The documents will not be included in CIS and so will not be accessible from SOAH’s internet home page.

(3) Materials submitted for in camera review. A party submitting materials for in camera review by the judge shall supply them to the judge in a sealed and labeled container, accompanied by an explanatory cover letter copied to all parties. The cover letter, addressed
to the judge, shall identify the docket number, style of the case, explain the nature of the sealed materials, and specify the relief sought. The outside of the container, addressed to the judge, shall identify the docket number, style of the case, and name of the submitting party, and shall be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged." The judge will determine whether the materials will be received for filing by SOAH. Unless otherwise ordered by the judge, materials reviewed in camera will be returned to the party that submitted them.

(d) Redaction of personal identifiers.

(1) Except for cases governed by subsection (c)(2) of this section, a person who files documents at SOAH, including exhibits offered at hearing, shall redact from the documents all personal identifiers that are:

(A) protected by law from disclosure; or

(B) unnecessary for resolution of the case. At the time of filing, SOAH personnel will not be responsible for screening documents for compliance with this rule.

(2) Personal identifiers. "Personal identifiers" are data elements and information that identify a unique individual and include: Social Security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, other similar government-issued personal identification numbers, bank account numbers, credit card numbers or other financial account numbers, dates of birth, full names of minors, full names of persons who are patients or clients in a health care setting, full names of persons who are victims of crimes, addresses and telephone numbers of commissioned peace officers, expunged criminal records, or records subject to a non-disclosure order issued by a court of this state unless allowed by law.

(3) Protective measures. If the filer determines that the personal identifiers are necessary for the resolution of the case, the document shall be filed in the same manner as a confidential document in accordance with subsection (c) of this section. If the judge determines that personal identifiers are necessary to the resolution of the case, the judge may admit the information into the record under seal or employ appropriate protective measures.

(4) Return to party for redaction. If the judge determines that the personal identifiers are not necessary to the resolution of the case, the judge may order the documents redacted prior to their admission into the record.

(e) Parties’ responsibilities regarding confidential materials and personal identifiers. The filing parties bear the responsibility to ensure that documents containing confidential information or personal identifiers are not filed by fax or electronic upload in public cases. Documents filed by fax or electronic upload in public cases will be posted on SOAH’s public website and accessible to the public.

(f) Discovery materials.

(1) Discovery requests and documents produced in discovery shall not be filed with SOAH, except as provided in paragraph (3) of this subsection.

(2) Documents produced in discovery shall be served upon the requesting parties and notice of service shall be given to all parties. The party responsible for service of the discovery materials shall retain an exact duplicate of the original documents.

(3) Motions and responses in a discovery dispute shall include only the relevant portions of the discovery materials.

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

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

TRD-201103643
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 22, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 475-4931

SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.501

The State Office of Administrative Hearings (SOAH) adopts an amendment to §155.501, concerning Default Proceedings. The amendment is adopted with changes to the proposed text, as published in the March 11, 2011, issue of the Texas Register (36 TexReg 1633). The adopted amendment provides more efficient procedures for disposing of cases by default where appropriate notice has been provided.

SOAH received three comments to the proposed amendment of §155.501 during the comment period of March 11, 2011, through April 11, 2011. Comments on the proposed amendment were received from the Texas Alcoholic Beverage Commission (TABC), Texas Real Estate Commission (TREC), and Texas Board of Nursing (TBN or the Board). A summary of the comments, SOAH’s responses, and any resulting change(s) to the amended section follow.

Comments:

TREC commented that it would be helpful to referring agencies if the SOAH judge issued a finding of adequate notice so that the referring agency would not have to make an additional determination regarding the adequacy of notice.

SOAH’s response:

SOAH agrees. The SOAH judge will assess the adequacy of notice at the beginning of the scheduled hearing. Including a finding on this preliminary issue is reasonable in order to avoid duplication of work. Accordingly, subsection (e) has been revised to require the judge to include this finding in the order of dismissal.

TREC and TABC both suggest that, because SOAH retains authority to set aside a default in response to a motion filed within ten days of the hearing, the rule should require SOAH to wait at least ten days after the hearing before issuing an order of dismissal.

SOAH’s response:

SOAH agrees. Retaining the case at SOAH during the ten-day filing period will avoid potential jurisdictional questions between SOAH and the referring agency regarding the appropriate agency to rule on the motion. Accordingly, subsection (e) has been revised to provide that the judge will wait ten days after the hearing to dismiss the case from the SOAH docket.
TBN filed comments objecting to the judge's discretion to dismiss enforcement matters for informal disposition by the referring agency. The Board observes that it has referred several hundred cases to SOAH and that a large percent of them "routinely" result in hearings at which the respondent fails to appear despite provision of adequate notice. The Board notes that it has an internal default process for those respondents who never request a hearing. It asserts that it only refers those cases to SOAH in which a proposal for decision is truly required. The Board states that the proposed default provisions are not authorized and would be inefficient. It further claims that the Board, rather than SOAH, is in the better position to determine whether a proposal for decision is required. These contentions, and SOAH's response to each of them, are set out in more detail below.

TBN challenges the legality of the proposed rule. It asserts, "Informal disposition by default at the agency is not possible when the enabling legislation requires matters to be decided at SOAH." It cites Texas Occupations Code, §301.459, which provides that the Board "shall adopt procedures under the Administrative Procedure Act 'governing formal disposition of a contested case' and that SOAH 'shall conduct a formal hearing.'"

SOAH response:

SOAH does not view §301.459 as prohibiting the informal disposition of the case by a default procedure that would be otherwise authorized by the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, §2001.056. The most reasonable reading of these provisions is that SOAH will conduct any formal hearing that occurs, and not that a formal hearing is necessary in every instance, even in the absence of willing participants. The Board's comment, in fact, supports this interpretation in that the Board notes that it averages disposing of about 350 enforcement cases annually through internal default procedures that are never referred to SOAH.

TBN also asserts that it, rather than SOAH, is in the best position to determine whether a default proceeding should be decided by default proposal for decision or through internal default at TBN.

SOAH response:

TBN does not specify why it would ever decide a proposal for decision is necessary in order to dispose of a matter by default. In each instance, the Board will have the notice of hearing and, under current practices, the default proposal for decision would accept as true the allegations contained in that notice. 1 TAC §155.501(a). Assuming that the notice of hearing is adequate--and SOAH will continue to make a finding on the adequacy of notice under the proposed rule--the default proposal for decision would not normally provide the Board decision makers with additional helpful information.

Even so, the rule as proposed would afford the judge discretion to issue a proposal for decision rather than a simple dismissal order if case-specific circumstances are shown to warrant that action. The referring agency would simply need to be prepared to persuasively convey the need for this approach to the judge.

The Board also asserts that the proposed rule would be inefficient. It states, "At best, this unilateral discretion to dismiss will lead to unjustified delay in final resolution. At worst, the Board may be locked into a circular procedure wherein a Respondent may repeatedly demand a SOAH hearing but avoid SOAH by failing to appear."

SOAH response:

SOAH disagrees with the Board's contention that the proposed default rule would be inefficient. Its entire purpose is to increase efficiency by focusing limited resources on those disputes in which a hearing is truly desired and by streamlining procedures for disposing of matters in which notice is adequate and the respondent fails to appear.

In SOAH's experience, disproportionate time is too often required to process default cases in which adequate notice was provided. The current process requires the judge to analyze the adequacy of the notice and prepare and issue a written proposal for decision that translates the allegations contained in the notice of hearing into findings of fact and conclusions of law. Again, because the allegations must be accepted as true, there is no weighing of evidence.

If notice is adequate, the proposal for decision is simply an amalgamation and repackaging of the Board's pleadings. Even so, it is not uncommon for the notice of hearing, though legally adequate, to be drafted in such a manner that the preparation of the proposal for decision is nevertheless time-consuming. The referring agency then reviews the proposal for decision and sometimes files exceptions because it believes technical errors have been made or that different or additional findings should be included. Once the period for filing exceptions runs (normally thirty days after service of the proposal for decision) the judge reviews and responds to these exceptions, and the agency final decision maker then issues a final order.

In contrast, the amended rule will allow the judge to issue a simple order of dismissal ten days after the hearing, and the matter can then be immediately disposed of informally by the referring agency pursuant to APA, §2001.056. In SOAH's view, this simplified approach will be far more efficient than the current process.

SOAH is also unpersuaded by the worst-case scenario envisioned by the Board in which a respondent creates a never-ending loop by repeatedly requesting hearings at which the respondent fails to appear. As mentioned previously, the SOAH judge will make a finding regarding the adequacy of notice. If notice is found to be adequate and the respondent fails to appear at the hearing and fails to move timely to set aside the default, SOAH is unaware of any authority that would entitle the respondent to another hearing as a matter of right. Instead, the referring agency would be entitled to dispose of the matter by default though it could, in its discretion, re-refer the matter to SOAH if warranted by the particular circumstances of the case.

The amendment is adopted under Texas Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Texas Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.


(a) Default. If a party that does not bear the burden of proof and to whom a notice of hearing is served or provided under this section fails to appear for hearing, the judge may proceed in that party's absence on a default basis. If a proposal for decision or final decision is issued, the factual allegations listed in the notice of hearing will be deemed admitted.
(b) Proof to support default. Any default proceeding under this section requires adequate proof of the following:

(1) proper notice was received by the defaulting party;
(2) the notice included a disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing; and
(3) the notice satisfies the requirement of Texas Government Code, §2001.051 and §2001.052, and §155.401 of this title (relating to Notice of Hearing).

(c) Alternative showing of notice. In the alternative, when it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if:

(1) the referring agency’s statute or rules authorize service of the notice of hearing by sending it to the party’s last known address as shown by the referring agency’s records; and
(2) there is credible evidence that the notice of hearing was sent by first class or certified mail to such address.

(d) Upon receiving the required showing of proof to support a default, the judge may announce the default, recess the hearing, issue an order dismissing the case from the SOAH docket, and return the file to the referring agency for informal disposition on a default basis in accordance with Texas Government Code, §2001.056. If there is adequate proof of notice to support a default, the judge shall include a finding of adequate notice in the order dismissing the case from the SOAH docket.

(e) In the absence of receiving adequate proof to support a default, the judge shall continue the case and direct the party responsible for the provision of notice to provide adequate notice. If the responsible party persists in failing to provide adequate notice, the judge may dismiss the case from the SOAH docket without prejudice to refiling.

(f) Motion to set aside default. A party may file a motion with SOAH no later than ten days after the hearing to set aside a default announced at the hearing and to reopen the record. The judge will not issue a dispositive order or proposal for decision during this ten-day period. If a timely motion to set aside a default is filed, the judge may grant the motion, set aside the default, and reopen the hearing for good cause shown, or in the interests of justice.

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 September 2, 2011.

TRD-201103644
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 22, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 475-4931

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.457, Cost Finding Methodology, in its Reimbursement Rates chapter. The rule is adopted without changes to the proposed text as published in the July 15, 2011, issue of the Texas Register (36 TexReg 4485) and, therefore, will not be republished.

Background and Justification

This rule establishes the cost finding methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program. Among other things, the rule describes limitations for reporting wage rates, benefits and hours for related-party direct service workers. These limitations were developed at a time when all ICF/MR providers were subject to fiscal accountability. Fiscal accountability rules required all ICF/MR providers to meet certain spending requirements for a broad range of direct care staff types and so the related-party cost reporting rules were broadly drafted to apply to all direct service staff.

Rule amendments adopted in the June 11, 2010, issue of the Texas Register (35 TexReg 5026) limited fiscal accountability to services delivered on or before August 31, 2009 and added the ICF/MR program to the Attendant Compensation Rate Enhancement effective for services delivered on or after September 1, 2010 (35 TexReg 5015). The Attendant Compensation Rate Enhancement applies only to staff defined as attendants in §355.112 (relating to Attendant Compensation Rate Enhancement).

HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to apply related-party limits to attendants only. All other related-party staff types will remain subject to related-party cost reporting rules described in §355.102 (relating to General Principles of Allowable and Unallowable Costs).

The rule also currently limits the sum of direct care hours reported on ICF/MR cost reports for any individual owner or related party to 2,600 per year. It has always been the intent of HHSC to limit the hours that an owner or related party could report as direct care service hours on the cost report to 2,600 hours per cost reporting year (50 hours times 52 weeks). Because HHSC did not have the technology to link related cost reports across multiple programs, each individual related party was allowed to report up to 2,600 hours of direct care work for each program in which they worked. For example, a related party working in the ICF/MR and Home and Community-based Services (HCS) programs could report up to 5,200 hours per year as a direct care employee (2,600 hours in the ICF/MR program and 2,600 hours in the HCS program).

HHSC is in the process of implementing a web-based cost reporting system that will allow it to link related cost reports across multiple programs. As a result of this reporting system change and the move away from fiscal accountability (spending requirements for all direct care staff) to the rate enhancement system
The rule amendments adopted in the June 11, 2010, issue of the Texas Register (35 TexReg 5026) limited fiscal accountability to services delivered on or before August 31, 2009 and added the HCS and TxHmL programs to the Attendant Compensation Rate Enhancement effective for services delivered on or after September 1, 2010 (35 TexReg 5015). The Attendant Compensation Rate Enhancement applies only to staff defined as attendants in §355.112 (relating to Attendant Compensation Rate Enhancement).

HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to apply related-party limits to attendants only. All other related-party staff types will remain subject to related-party cost reporting rules described in §355.102 (relating to General Principles of Allowable and Unallowable Costs).

The rule also currently limits the sum of direct care hours reported on HCS/TxHmL cost reports for any individual owner or related party to 2,600 per year. It has always been the intent of HHSC to limit the hours that an owner or related party could report as direct care service hours on the cost report to 2,600 hours per cost reporting year (50 hours times 52 weeks). Because HHSC did not have the technology to link related cost reports across multiple programs, each individual related party was allowed to report up to 2,600 hours of direct care work for each program in which they worked. For example, a related party working in the HCS and Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) programs could report up to 5,200 hours per year as a direct care employee (2,600 hours in the HCS program and 2,600 hours in the ICF/MR program).

HHSC is in the process of implementing a web-based cost reporting system that will allow it to link related cost reports across multiple programs. As a result of this reporting system change and the move away from fiscal accountability (spending requirements for all direct care staff) to the rate enhancement system (spending requirements only on attendants), HHSC is changing this rule to clearly limit the total number of attendant hours reported across all cost reports for any individual owner or related party to 2,600 hours. The practical result of this change will be that related parties will not be able to claim attendant hours worked for more than a total of 2,600 hours per cost report year and can report any additional hours worked as administrative hours.

Comments
The 30-day comment period ended August 15, 2011. During this period, HHSC received no comments regarding the proposed amendments to this rule.

Legal Authority
The amendment is adopted under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission’s duties; Texas Human Resources Code §32.021 and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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 September 12, 2011.

TRD-201103700
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 2, 2011
Proposal publication date: July 15, 2011
For further information, please call: (512) 424-6900

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION
1 TAC §355.722
The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.722, Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers, in its Reimbursement Rates chapter. The rule is adopted with changes to the proposed text as published in the July 15, 2011, issue of the Texas Register (36 TexReg 4489) and, therefore, will be republished.

Background and Justification
This rule establishes the cost finding methodology for the HCS and TxHmL programs. Among other things, the rule describes limitations for reporting wage rates, benefits and hours for related-party direct service workers. These limitations were developed at a time when all HCS providers were subject to fiscal accountability. Fiscal accountability rules required all HCS providers to meet certain spending requirements for a broad range of direct care staff types and so the related-party cost reporting rules were broadly drafted to apply to all direct service staff.

HHSC has made a minor correction to the proposed language in subsection (h)(1) to change "job coaches" to "job coaches."
authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

§355.722. Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers.

(a) Submittal of cost reports. On an annual basis, all providers must submit cost reports as directed by the Texas Health and Human Services Commission (HHSC) in accordance with this subchapter. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Attendant service costs. Attendant service costs are defined in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(2) Staff who provide both attendant and non-attendant services. For staff whose duties include work other than the provision of attendant services for the provider, time spent providing attendant services and associated expenses may be reported as attendant service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Providers must report the following costs:

(A) Staff wages related to the delivery of attendant services.

(B) These costs may be either the provider’s actual expense or contracted expenditures.

(b) Reviews of exclusions or adjustments. A provider who disagrees with HHSC’s exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Field audit and desk review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(d) Notification of exclusions and adjustments. HHSC will notify a provider of the results of a desk review or field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(e) Cost reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(f) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(g) Revenues. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Related parties. Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title.

(1) Time sheet requirement. Owners and related parties who provide multiple types of attendant service (e.g., direct care workers, direct care trainers, and job coaches) or both attendant services and non-attendant services must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to the compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title.

(2) Calculation of allowable hourly wage rate and benefits. Allowable hourly wage rate and benefits for attendant service work must be the lesser of the actual hourly wage rate paid and benefits paid or the hourly wage rate and benefits for a comparable attendant assumed in the fully-funded model. The fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs) for the rate period.

(3) Calculation of allowable hours for attendants. Allowable hours per unit of service for an attendant when the reported hours include related-party hours, are determined as follows:

(A) Step 1. Determine the hours per unit of service for a comparable attendant-service staff-type assumed in the fully-funded model as defined in paragraph (2) of this subsection, adjusted for the provider’s average Level of Need (LON) during the reporting period. For TxHmL, until such time as LONs are established, the provider’s average LON is assumed to be LON 5.

(B) Step 2. Determine the hours per unit of service encompassed by the 90th percentile in the array of hours per unit of service for comparable attendant-service staff-types as reported by those contracted providers not reporting any related-party hours for that staff-type, adjusted for the provider’s average LON during the reporting period. For TxHmL, until such time as LONs are established, the provider’s average LON is assumed to be LON 5.

(C) Step 3. Determine the greater of Step 1 and Step 2.

(D) Step 4. Determine the actual hours worked by the staff-type per unit of service.

(E) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable hours per unit of service for the attendant-service staff-type in question.

(4) Exception to related-party adjustment. If at least 40 percent of total labor hours in a specific related-party’s attendant-service staff-type were provided by non-related-parties, the related-party’s hourly wage rate may be the higher of the model assumption for that attendant-service staff-type described in paragraph (2) of this subsection or the non-related party average for that attendant-service staff-type, so long as the non-related party average does not exceed the related-party’s actual hourly wage.

(5) Maximum attendant-care hours. During any single fiscal year, the sum of all attendant-care hours reported on any cost report(s) for any individual owner or related party cannot exceed 2,600.

(6) Classification of hours over the limit. Hours, hourly wages and benefits above the limits described in paragraphs (2) - (5) of this subsection are to be reported as administrative hours, hourly wages and benefits.

(i) Adjusting reported costs. Each provider’s total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective re-
imbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title.

(j) Fiscal Accountability for HCS. This subsection applies to services delivered on or before August 31, 2009 and only for HCS program services.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of the direct service costs including wages, and benefits, from all providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title.

(A) The Department of Aging and Disability Services (DADS) will place a vendor hold on payments to a provider whose provider agreement is being assigned or terminated. The provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an acceptable cost report and repayment of any amounts due in accordance with this section, the vendor hold will be released.

(B) Providers that do not submit a cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

(C) Providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit a cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(3) Comparison of direct-service costs to total direct-service revenue. HHSC will require providers to report all direct costs incurred on an annual fiscal year basis. HHSC will compare the reported direct service costs to the total direct service revenue.

(4) Calculation of direct-service revenues and fiscal accountability repayment. Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 90% but greater than or equal to 85% of the direct service revenues will be required to pay to DADS 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) Providers whose direct service costs are less than 85% but greater than or equal to 80% of the direct service revenues will be required to pay to DADS 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.

(E) Providers who do not submit a cost report as described in paragraph (2)(B) or (C) of this subsection will be assumed to have direct service costs equal to 65% of the direct services revenues and will be required to pay to DADS the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of paragraph (2)(B) or (C) of this subsection.

(5) Notification of recoupment. Providers will be notified, by certified mail, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC. If a subsequent review by HHSC or audit results in adjustments to the cost report as described in subsection (a) of this section that change the amount to be repaid to HHSC, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. Providers will submit the repayment amount within 60 days of notification.

(6) Repayment. Repayment will be made by the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(7) Providers required to repay revenues to DADS will be jointly and severally liable for any repayment. DADS will apply a vendor hold on Medicaid payments to a provider for not making the payment to DADS within 60 days of receiving notice.

(8) Aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

(i) Aggregation--For an entity defined in clause (iii) of this subparagraph that controls, as defined in clause (iv) of this subparagraph, more than one HCS component code, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes controlled by the entity in the aggregate rather than requiring each component code to meet its spending requirement individually. For commonly owned corporations defined in clause (ii) of this subparagraph, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes in the controlled small group in the aggregate rather than requiring each component code to meet its spending requirement individually. Corporations that do not meet the definitions under clauses (ii) - (iii) of this subparagraph are not eligible for aggregation.

(ii) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(iii) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(iv) Control--greater than 50% ownership by the entity.
The commission received no comments on the proposed amendment. No requests for a hearing were received.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2010) (PUR) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 and Supp. 2010), which requires the commission to adopt procedures rules.


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

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

TRD-201103689
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 28, 2011
Proposal publication date: July 1, 2011
For further information, please call: (512) 936-7223

PART 19. EDUCATION

CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

The State Board of Education (SBOE) adopts amendments to §§126.1, 126.11, and 126.21 and new §§126.5-126.7, 126.13-126.16, 126.31-126.50, and 126.61-126.64, concerning Texas essential knowledge and skills (TEKS) for technology applications. The amendments to §§126.1, 126.11, and 126.21 and new §§126.5, 126.13, 126.31, 126.33, 126.34, 126.36, 126.38-126.43, 126.45, 126.47, 126.49, 126.50, and 126.61 are adopted without changes to the proposed text as published in the March 4, 2011, issue of the Texas Register (36 TexReg 1431) and will not be republished. New §§126.6, 126.7, 126.14-126.16, 126.32, 126.35, 126.37, 126.44, 126.46, 126.48, and 126.62-126.64 are adopted with changes to the proposed text as published in the March 4, 2011, issue of the Texas Register (36 TexReg 1431). The sections establish the TEKS for technology applications courses in elementary, middle school, and high school. The adopted rule actions establish revised technology applications TEKS for implementation beginning with the 2012-2013 school year.

Applications for appointment to technology applications TEKS review committees were accepted by the Texas Education Agency (TEA) in September and October 2009. Applications were provided to SBOE members at the November 2009 meeting, nominations were made in November and December 2009, and individuals were notified of their appointment to serve on

---

ADOPTEO RULES  September 23, 2011  36 TexReg 6263
a committee in March 2010. At the November 2009 meeting, SBOE members were asked to begin appointing experts to review the technology applications TEKS.

At the March 2010 meeting, staff presented the SBOE Committee on Instruction with draft guidelines for the technology applications expert reviewers. The committee had no additional guidance for staff regarding the expert reviewers. In April 2010, three expert reviewers appointed by the SBOE reviewed the current technology applications TEKS. Committees were convened in early May 2010 to begin review of the technology applications TEKS. The review committees met again in July 2010 to complete initial drafts of the recommended revisions to the technology applications TEKS. Initial drafts of the recommendations for revisions to the technology applications TEKS were posted on the TEA website for informal feedback.

Initial drafts were also reviewed by the three expert reviewers. During the September 2010 Committee of the Full Board meeting, expert reviewers and representatives from the TEKS review committees provided invited testimony.

The technology applications TEKS review committees met again in October 2010 to review feedback and complete recommendations for revisions to the technology applications TEKS. The recommendations from the review committees were provided to the Committee of the Full Board at the November 2010 meeting. At that time, the committee requested that the expert reviewers review the recommendations a final time and submit their written feedback to the board. Final feedback from the expert reviewers was provided to the board at the January 2011 meeting.

At the January 2011 meeting, the SBOE approved for first reading and filing authorization the proposed revisions to 19 TAC Chapter 126, Subchapters A-C, and proposed new 19 TAC Chapter 126, Subchapter D.

During its April 2011 meeting, a public hearing was held and the SBOE took action to approve the following rule actions for second reading and final adoption as part of proposed revisions to 19 TAC Chapter 126, Subchapters A-C, and new Subchapter D: amendments to §§126.1, 126.11, and 126.21 and new §§126.5-126.7, 126.13-126.16, 126.31, 126.36, 126.38-126.47, 126.49, 126.50, and 126.61-126.64.

Also during its April 2011 meeting, the SBOE delayed adopting standards for six high school courses until July 2011 so the board members could continue to review and consider input received during the public comment period. Therefore, the SBOE took action to postpone final action on proposed new 19 TAC Chapter 126, Subchapter C, §126.32, Fundamentals of Computer Science, §126.33, Computer Science I, §126.34, Computer Science II, §126.35, Computer Science III, §126.37, Discrete Mathematics, and §126.48, Web Game Development.

During its July 2011 meeting, the SBOE took action to approve for second reading and final adoption the proposed new 19 TAC §§126.32-126.35, 126.37, and 126.48.

In response to public comment, the following changes were made to the proposed revisions to 19 TAC Chapter 126, Subchapters A-C, and new Subchapter D, since published as proposed.

**Kindergarten-Grade 2 and Grades 3-5.**

In §126.6, subsections (b)(1)(C) and (b)(4)(D) were amended to add programming languages to the list of resources for students in Kindergarten-Grade 2.

In §126.6, subsection (b)(6)(B) was amended to add designing solutions to problems as part of a student expectation for students in Kindergarten-Grade 2.

In §126.7, subsection (b)(4)(B) was amended to add programming languages to the list of resources for students in Grades 3-5.

**Grades 6-8.**

In §§126.14, 126.15, and 126.16, subsection (c)(4)(B) was amended to add designing a computer program as part of a student expectation for students in Grades 6-8.

**High School.**

In §126.32, the title and subsection (a) were amended to reflect one-half to one credit for the Fundamentals of Computer Science course instead of one credit to provide districts the flexibility to offer the course for one semester or a full year.

In §126.35, subsection (a) was amended to reflect the correct course name of AP Computer Science A as one of the prerequisites for the Computer Science III course. In addition, a technical edit was made to subsection (c)(3)(F) to change the phrase "including a linked list of a linked list" to "including a linked list of linked lists."

In §126.37, technical edits were made to subsections (b)(2) and (c)(2)(B) to correct the order of topics in the Discrete Mathematics course.

In §126.44, subsection (a) was amended to remove language that would have allowed the Digital Communications in the 21st Century course to fulfill the speech graduation requirement.

In §126.46, subsection (a) was amended to remove language that would have allowed the Web Communications course to fulfill the speech graduation requirement.

In §126.48, subsection (a) was amended to remove language that would have allowed the Web Game Development course to fulfill the fine arts graduation requirement.

In §§126.62, 126.63, and 126.64, the titles and subsection (a) were amended to reflect one to two credits for each course instead of one to one and one-half credits.

In §126.62, the title and subsection (b) were amended to reflect the correct course name of AP Computer Science A. In addition, §126.62(a) was amended to add the recommended prerequisite that "a student should be comfortable with functions and the concepts found in the uses of functional notation such as f(x) = x + 2 and f(x) = g(h(x))."

The adopted rule actions have no new procedural and reporting implications. The adopted rule actions have no new locally maintained paperwork requirements.

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

In accordance with the TEC, §7.102(f), the SBOE approved the amendments and new rules for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2012-2013 school year in order to allow districts to begin preparing for implementation. The effective date for the amendment is 20 days after filing as adopted.
Following is a summary of the public comments received and the corresponding responses regarding the proposed revisions to 19 TAC Chapter 126, Subchapters A-C, and new Subchapter D.

Comment. One teacher stated that the language in the elementary TEKS should be more to the point and appropriate for the grade level.

Response. The SBOE disagreed and determined the language in the revised TEKS was appropriate for the grade level.

Comment. One teacher stated that students try to save products to drop boxes, but have difficulty due to the number of steps.

Response. The SBOE agreed and determined that the revised TEKS require students to save products to a variety of storage devices, but do not specifically require drop boxes.

Comment. Two teachers stated that students in Kindergarten are able to use technology successfully in whole class settings.

Response. This comment is outside the scope of the proposed rulemaking. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher stated that there is not a great use for making spreadsheets or using the help feature in Kindergarten.

Response. The SBOE disagreed and determined that using the help feature was appropriately included in the revised TEKS. The SBOE offered the following clarification. Using spreadsheets is a possible illustrative example and is not required to be taught.

Comment. One teacher stated that in a Kindergarten classroom the student expectations would be accomplished in large-group settings with the teacher as the facilitator.

Response. This comment is outside the scope of the proposed rulemaking. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher stated that students in Kindergarten can create original products with technology.

Response. The SBOE agreed and determined that the revised TEKS require students to create original products using a variety of resources. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for collaborating with another class in another school, city, state, or country in order to learn about each other.

Response. The SBOE provided the following clarification. The revised TEKS sufficiently addressed communication tools that allow students to interact, collaborate, or publish with peers locally and globally; however, they do not require collaboration with classes in other schools, cities, or countries.

Comment. Three teachers stated that Kindergarten is the time to teach computer basics, including terminology, tools, software, keyboarding, and general use of the computer.

Response. The SBOE agreed and determined that computer basics were sufficiently addressed in the revised TEKS.

Comment. One teacher stated that the proposed TEKS require some modifications for the Kindergarten classroom such as teaching and participating as a whole group.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher stated that professional development at the local level would help teachers learn how to address the TEKS in the Kindergarten classroom.

Response. The SBOE provided the following clarification. Appropriate information related to providing instruction in the revised TEKS should occur during curriculum development and professional development.

Comment. One teacher stated that she will address the TEKS in her Grade 1 classroom by assigning research projects and utilizing Pebble Go and Encyclopedia Britannica.

Response. The SBOE offered the following clarification. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher stated that Grade 1 students are ready to start learning how to do research projects and that there are great tools for developing research and word processing skills at this grade level.

Response. The SBOE agreed and determined that the revised TEKS appropriately address research skills and strategies.

Comment. One teacher expressed support for §126.6(b)(1)(A), “apply prior knowledge to develop new ideas, products, and processes.” The commenter added that students should be the ones developing products.

Response. The SBOE agreed and determined that the student expectation requires students to develop new ideas, products, and processes.

Comment. One teacher recommended modifying §126.6(b)(1)(B) to read, “utilizing a variety of resources, create original products using applications such as word processing, spreadsheets, graphic organizers, charts and/or multimedia.”

Response. The SBOE disagreed and determined that §126.6(b)(1)(B) was appropriate as proposed.

Comment. One teacher stated that programming languages should be added to the list of resources for students in Kindergarten-Grade 2.

Response. The SBOE agreed and took action to amend §126.6(b)(1)(C) to read, “explore virtual environments, simulations, models, and programming languages to enhance learning.” The SBOE also took action to amend §126.6(b)(4)(D) to read, “collect, analyze, and represent data using tools such as word processing, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages.”

Comment. Two teachers stated that following steps in a process independently can be challenging for students in Kindergarten.

Response. The SBOE agreed and determined that §126.6(b)(1)(D) requires students to create and execute steps to accomplish a task, but does not specifically state that it must be accomplished independently.

Comment. Four teachers expressed concern regarding the availability of safe and appropriate communication tools for students that would allow anytime, anywhere access for collaboration on a local and global level.
Response. The SBOE disagreed and determined that communication tools for students that would allow anytime, anywhere access for collaboration on a local and global level were appropriately included in the TEKS.

Comment. Fifteen teachers expressed support for the inclusion of the expectation to "communicate locally and globally."

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three teachers expressed concern regarding the appropriateness of concepts such as collaborate or publish with peers globally for emergent readers and writers.

Response. The SBOE disagreed and determined that the revised TEKS were in appropriate in content and complexity.

Comment. One teacher stated that more specific information regarding how to meet §126.6(b)(2)(A) would be helpful.

Response. The SBOE disagreed and determined that §126.6(b)(2)(A) was appropriate as proposed.

Comment. One teacher stated that in §126.6(b)(2)(D), examples of virtual environments would be helpful for teachers.

Response. The SBOE disagreed and determined that §126.6(b)(2)(D) was appropriate as proposed.

Comment. One administrator recommended the addition of the word "validity" to §126.6(b)(3)(C).

Response. The SBOE disagreed and determined that §126.6(b)(3)(C) was appropriate as proposed.

Comment. One teacher expressed support for the requirement that students evaluate the usefulness of acquired digital content in §126.6(b)(3)(C).

Response. The SBOE agreed and determined that evaluating the usefulness of acquired digital content was appropriately addressed in §126.6(b)(3)(C).

Comment. One teacher stated that Grade 2 students cannot evaluate the usefulness of digital content as required in §126.6(b)(3)(C) and would need the teacher to make that distinction.

Response. The SBOE disagreed and determined that the requirement in §126.6(b)(3)(C) was grade-level appropriate.

Comment. One teacher questioned the appropriateness of §126.6(b)(4)(A) and asked if it is developmentally appropriate for children under the age of seven to identify what is unknown in a problem.

Response. The SBOE disagreed and determined that the requirement in §126.6(b)(4)(A) was grade-level appropriate.

Comment. One teacher expressed support for the inclusion of selecting the suitable program for a desired product in §126.6(b)(4)(B).

Response. The SBOE agreed and determined that selecting a suitable program for a desired product was appropriately addressed in §126.6(b)(4)(B).

Comment. Three teachers expressed support for the inclusion of the concept of evaluating products prior to final submission in §126.6(b)(4)(C) because it is a vital skill on which teachers should focus in every subject area.

Response. The SBOE agreed and determined that evaluating products prior to final submission was appropriately addressed in §126.6(b)(4)(C).

Comment. One teacher stated that §126.6(b)(4)(D) should be modified to include the term "information" in addition to "data."

Response. The SBOE disagreed. In response to other comments, the SBOE took action to amend §126.6(b)(4)(D) to read, "collect, analyze, and represent data using tools such as word processing, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages."

Comment. One teacher expressed support for the inclusion of graphic organizers in §126.6(b)(4)(D).

Response. The SBOE agreed. In response to other comments, the SBOE took action to amend §126.6(b)(4)(D) to read, "collect, analyze, and represent data using tools such as word processing, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages."

Comment. One administrator recommended that §126.6(b)(5)(A) read, "adhere to acceptable use policies and practice safe, legal, and responsible use of information and technology" in order to match the TEKS for Grades 3-5.

Response. The SBOE disagreed and determined that §126.6(b)(5)(A) was appropriate as proposed.

Comment. One teacher stated that in §126.6(b)(6)(A), "such as" statements with examples would be helpful.

Response. The SBOE disagreed and determined that §126.6(b)(6)(A) was appropriate in content and specificity.

Comment. One teacher stated that §126.6(b)(6)(A)-(G) are concise and teachable.

Response. The SBOE agreed. The SBOE also took action to amend §126.6(b)(6)(B) to read, "use appropriate digital tools and resources for storage, access, file management, collaboration, and designing solutions to problems."

Comment. Four teachers expressed concern regarding whether the inclusion of keyboarding in §126.6(b)(6)(F) is developmentally appropriate for this grade level.

Response. The SBOE disagreed and determined that the inclusion of keyboarding in §126.6(b)(6)(F) was grade-level appropriate.

Comment. One teacher asked if the state would be providing smaller keyboards for younger students.

Response. The SBOE provided the following clarification. Each district is responsible for purchasing classroom materials.

Comment. Two teachers stated that the TEKS for Kindergarten-Grade 2 are vague and should include "such as" statements for further clarification and examples.
Response. The SBOE disagreed and determined that the revised TEKS for Kindergarten-Grade 2 were appropriate in content and specificity.

Comment. One teacher expressed concern about addressing the communication and collaboration strand at Kindergarten-Grade 2 due to the fact that most online communities require students be at least 13 years old to use their services.

Response. The SBOE disagreed and determined that the communication and collaboration strand was appropriate for Kindergarten-Grade 2.

Comment. Three teachers stated that the push for more TEKS at the elementary level overwhelms students and teachers.

Response. The SBOE disagreed and determined that the revised TEKS for Kindergarten-Grade 2 were appropriate in content and rigor.

Comment. One teacher stated that the issues of source codes and intellectual property are challenging to address in Kindergarten-Grade 2.

Response. The SBOE disagreed and determined that intellectual property was appropriately addressed in the revised TEKS for Kindergarten-Grade 2. The SBOE offered the following clarification. Source codes are not addressed in the revised TEKS.

Comment. One teacher expressed concerns about using blogs as early as Kindergarten to collaborate and publish.

Response. The SBOE agreed. Using blogs is not required in the revised TEKS for Kindergarten-Grade 2.

Comment. One teacher expressed support for the inclusion of more problem-solving skills and project-based use of technology in Kindergarten-Grade 2.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that she is overwhelmed by the student expectations outlined in the Kindergarten-Grade 2 TEKS for students who are still learning the basics of reading and math.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in content and complexity.

Comment. One teacher expressed concern that the wording of the TEKS is intimidating to teachers.

Response. The SBOE disagreed and determined that the language of the revised TEKS was appropriate as proposed. The SBOE took action to approve additional changes to respond to other comments.

Comment. One teacher stated that basic computer skills need to be taught at an early age and expressed support for the inclusion of these skills in the TEKS.

Response. The SBOE agreed and determined that basic computer skills were appropriately included in the revised TEKS for Kindergarten-Grade 2. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that young students can be paired with older students on Earthwalk laptops to teach keyboarding and to get the students comfortable with basic computer skills.

Response. This comment is outside the scope of the proposed rulemaking. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. Two teachers expressed support for the technology operations and concepts strand in Kindergarten-Grade 2 because it is important for students to know how technology functions and how to use it.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that all six strands in the TEKS for Kindergarten-Grade 2 will help students be successful in the 21st century.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One administrator recommended that the language used in the TEKS for Grades 6-8 be included in the TEKS revisions for Kindergarten-Grade 2 and Grades 3-5 to improve vertical alignment.

Response. The SBOE disagreed and determined that the language used in the TEKS for Kindergarten-Grade 2 and Grades 3-5 is appropriate as proposed.

Comment. One teacher expressed support for the inclusion of personal learning communities and social environments in §126.7(b)(2)(C).

Response. The SBOE agreed and determined that personal learning communities and social environments were appropriately addressed in §126.7(b)(2)(C).

Comment. One teacher recommended the inclusion of a "such as" statement in §126.7(b)(2)(C) to provide examples of acceptable social learning environments.

Response. The SBOE disagreed and determined that §126.7(b)(2)(C) was appropriate in content and specificity.

Comment. One teacher stated that teachers may have difficulty identifying how to address the concept identified in §126.7(b)(2)(C) at this grade level.

Response. The SBOE disagreed and determined that §126.7(b)(2)(C) was appropriate in content and specificity.

Comment. One teacher stated that in §126.7(b)(2)(F), the order in which printing and saving appear should read, "perform basic software application functions, including opening an application and creating, modifying, saving, and printing files." The teacher stated that the change would reflect the order in which the actions are performed.

Response. The SBOE disagreed and determined that the order of the functions in §126.7(b)(2)(F) was appropriate as proposed.

Comment. One teacher expressed support for the list of the Boolean identifiers in §126.7(b)(3)(A).

Response. The SBOE agreed and determined that Boolean identifiers were appropriately addressed in §126.7(b)(3)(A).

Comment. One teacher recommended that the order of §126.7(b)(3)(A)-(D) be reorganized and put in the following order: use various search strategies, acquire information, collect and organize, and validate and evaluate.
Response. The SBOE disagreed and determined that the sequence of student expectations in §126.7(b)(3) was appropriate as proposed.

Comment. One teacher stated that §126.7(b)(4)(B) should be modified to include the term "information" in addition to "data."

Response. The SBOE disagreed and determined that the use of the word "data" was appropriate. In response to other comments, the SBOE took action to amend §126.7(b)(4)(B) to read, "collect, analyze, and represent data to solve problems using tools such as word processing, databases, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages."

Comment. Two teachers expressed support for requiring students to evaluate final products before submission in §126.7(b)(4)(C).

Response. The SBOE agreed and determined that evaluating final products before submission was appropriately addressed in §126.7(b)(4)(C).

Comment. One teacher stated that in §126.7(b)(4)(D), clarification or examples for the student expectation "evaluate technology tools applicable for solving problems" would be helpful.

Response. The SBOE disagreed and determined that the language in §126.7(b)(4)(D) was appropriate in content and specificity.

Comment. One teacher stated that §126.7(b)(5)(G) seems redundant based on §126.7(b)(5)(A)-(F).

Response. The SBOE disagreed and determined that §126.7(b)(5)(A)-(G) were appropriate as proposed.

Comment. Two teachers stated that the elementary level TEKS would benefit from adding "such as" statements for clarification and examples.

Response. The SBOE disagreed and determined that the language in the revised TEKS were appropriate in content and specificity.

Comment. One teacher asked for clarification regarding what the expectations are for keyboarding in §126.7(b)(6)(E).

Response. The SBOE provided the following clarification. The specific expectations for keyboarding are identified in §126.7(b)(6)(E).

Comment. One teacher stated that the elementary TEKS seem vague and non-committal, while TEKS for middle school are very specific, build from one grade level to the next, and provide an excellent framework.

Response. The SBOE disagreed and determined that the elementary TEKS were appropriate in content and specificity.

Comment. One teacher expressed support for the specificity provided in the TEKS for Grades 3-5.

Response. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that many students are not mature enough to stay on task to complete an assignment with technology and that those not exposed at home have a difficult time keeping up with the pace and rigor of skills needed to be mastered.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that programming languages should be added to the list of resources for students in Grades 3-5.

Response. The SBOE agreed and took action to amend §126.7(b)(4)(B) to read, "collect, analyze, and represent data to solve problems using tools such as word processing, databases, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages."

Comment. Two teachers stated that the TEKS are grade-level appropriate and will require teachers to move beyond the basics.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that students continue to struggle to recognize and evaluate websites and properly cite them, which will be important skills during their lifetime.

Response. The SBOE agreed and determined that recognizing, evaluating, and properly citing websites could all be addressed within the revised TEKS.

Comment. One teacher stated that in §126.14(c)(6)(A), it would be beneficial to include examples of terminology such as LAN and Wi-Fi.

Response. The SBOE disagreed and determined that §126.14(c)(6)(A) was appropriate as proposed.

Comment. One teacher expressed support for the specific details listed for understanding troubleshooting techniques in §126.14(c)(6)(F).

Response. The SBOE agreed and determined that understanding troubleshooting techniques was appropriately addressed in §126.14(c)(6)(F).

Comment. One teacher expressed concern that the proposed TEKS for middle school require a lot of higher-order-thinking skills, which may not be grade-level appropriate and would require elementary schools to do more in order for the intermediate schools to be able to teach the revised student expectations.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in content and complexity.

Comment. One teacher questioned the meaning of the word "apply" in §126.15(c)(6)(B) and recommended substituting with the word "utilize."

Response. The SBOE disagreed and determined that §126.15(c)(6)(B) was appropriate as proposed.

Comment. One teacher asked if changes to the TEKS for Grade 8 will be effective in the 2011-2012 school year.

Response. The SBOE provided the following clarification. The revised TEKS for technology applications will be effective in September 2011 with an implementation date of the 2012-2013 school year.

Comment. One teacher stated that students will benefit from the more focused TEKS dealing with research, critical thinking, collaboration, and digital citizenship.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.
Comment. Three teachers questioned whether the terms "raster and vector graphics" in the student expectation in subsection (c)(1)(A) of §§126.14, 126.15, and 126.16 should be included.

Response. The SBOE disagreed and determined that the terms "raster and vector graphics" were appropriately included in the revised TEKS.

Comment. One teacher expressed concern with the student expectation in subsection (c)(1)(B) of §§126.14, 126.15, and 126.16 regarding the meaning of "create and present original works as a means of group or student expression." The teacher stated that more clarity should be provided on how such a product would be graded objectively if parameters are not provided.

Response. The SBOE disagreed and determined that the student expectation was appropriate in content and clarity.

Comment. One teacher stated that designing a computer program should be added as an expectation for students in Grades 6-8.

Response. The SBOE agreed and took action to amend the student expectation in subsection (c)(4)(B) of §§126.14, 126.15, and 126.16 to read, "plan and manage activities to develop a solution, design a computer program, or complete a project."

Comment. One teacher stated that in the student expectation in subsection (c)(6)(J) of §§126.14, 126.15, and 126.16, it would be helpful to include examples of remote input sources.

Response. The SBOE disagreed and determined that the language of the student expectation was appropriate as proposed.

Comment. One teacher stated that in §§126.14, 126.15, and 126.16, it is inefficient to use the same language at each grade level in the student expectations in subsection (c)(6)(K) and (L) with minor changes at Grades 7 and 8 to make the student expectations more advanced. The teacher added that the repetition seems unnecessary.

Response. The SBOE disagreed and determined that the language and specificity of the student expectations was appropriate as proposed.

Comment. One teacher asked how teachers will receive continuing education to address the rigor included in the revised TEKS.

Response. The SBOE provided the following clarification. Appropriate information for teachers related to the rigor of the revised TEKS should be made available during curriculum development and professional development.

Comment. One teacher stated that the proposed TEKS for middle school can be reinforced in content areas, but should be addressed in a separate technology course.

Response. The SBOE provided the following clarification. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. Eight teachers and one administrator stated that the revised TEKS for Grades 6-8 are aligned well and show a definite progression in student knowledge and skills.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that with the use of learning management systems and web-based tools and software, schools will be able to integrate the TEKS into student projects with ease.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher expressed concern that some schools may not have the same access to the necessary equipment and recommended addressing the standards in technology courses and learning.com tutorials.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher stated that the proposed TEKS for Grades 6-8 show remarkable insight into the various technology skills students will need to succeed and compete in the global marketplace.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that the proposed TEKS for Grades 6-8 seem more current and appropriate for most learners, but expressed concern that many students from lower socioeconomic backgrounds often have little experience with technology and may be very challenged.

Response. The SBOE agreed that the revised TEKS are more appropriate. However, the SBOE disagreed that students from lower socioeconomic backgrounds will be challenged. The SBOE determined that the revised TEKS for Grades 6-8 were appropriate in content and rigor. In response to other comments, the SBOE took action to approve additional changes to the revised TEKS for Grades 6-8.

Comment. One teacher stated that the revised TEKS for Grades 6-8 require a cognitive maturity far exceeding the expectations for middle school students. The teacher recommended providing the materials needed and organizing a concerted and aligned effort among all curriculum areas to ensure that teachers can guide the growth and development of the critical-thinking skills students need to accomplish the implementation of the TEKS.

Response. The SBOE disagreed and determined that the revised TEKS are appropriate in content and complexity.

Comment. One teacher stated that the TEKS will be challenging for teachers, but they need to help students grow and stretch into the new expectations.

Response. The SBOE provided the following clarification. Appropriate information related to implementing the revised TEKS will occur during curriculum development and professional development.

Comment. One teacher stated that programming languages should be added to the list of resources for students in Grades 6-8.

Response. The SBOE disagreed and determined that programming languages were adequately addressed elsewhere in the revised TEKS for Kindergarten-Grade 2 and Grades 3-5.

Comment. One teacher stated that the TEKS for Grades 6-8 are geared towards a 21st century learning environment.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Sixteen teachers stated that there is no need for §126.32, Fundamentals of Computer Science, which specifically uses stories, games, and animation to teach introductory com-
puter science. The commenters added that if Computer Science I were appropriately broad, it would allow the teaching of these introductory concepts.

Response. The SBOE disagreed and determined that Fundamentals of Computer Science was appropriately included in the revised TEKS. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Fifteen teachers stated that Fundamentals of Computer Science should be eliminated.

Response. The SBOE disagreed and determined that Fundamentals of Computer Science was appropriately included in the revised TEKS.

Comment. Six teachers stated that Fundamentals of Computer Science and Computer Science I should be combined and named Fundamentals of Computer Science.

Response. The SBOE disagreed and determined that Fundamentals of Computer Science and Computer Science I were appropriately included as separate courses in the revised TEKS.

Comment. One teacher stated that the Fundamentals of Computer Science course was created as a compromise to include a non-language specific course.

Response. The SBOE disagreed and offered the following clarification. The SBOE did not direct appointed review committees to create a compromise regarding language specificity in the computer science courses.

Comment. Fifteen teachers stated that in §126.32(c)(4)(F), the word "type" should be "types."

Response. The SBOE disagreed and determined that the word "type" was appropriate in §126.32(c)(4)(F).

Comment. Fifteen teachers stated that in §126.32(c)(4)(G), (I), (J), (K), and (M), the phrase "within a programmed story, game, or animation" should be deleted or replaced with something more general such as "within a digital artifact."

Response. The SBOE disagreed and determined that §126.32(c)(4)(G), (I), (J), (K), and (M) were appropriate in language and content.

Comment. Two teachers stated that object-oriented programming is not an appropriate concept for §126.33, Computer Science I, and should be deleted.

Response. The SBOE disagreed and determined that object-oriented programming was appropriately included in the revised TEKS for Computer Science I.

Comment. Seventeen teachers stated that graphical user interface is not an appropriate concept for Computer Science I and should be deleted.

Response. The SBOE disagreed and determined that graphical user interface was appropriately included in the revised TEKS for Computer Science I.

Comment. Sixteen teachers stated that style is not related to functionality, therefore, the phrase "and functionality" should be deleted from §126.33(c)(2)(D).

Response. The SBOE disagreed and determined that §126.33(c)(2)(D) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.33(c)(2)(E) should be clarified or deleted because the term "optimizing data visualization" is unclear.

Response. The SBOE disagreed and determined that §126.33(c)(2)(E) was appropriate in language and content.

Comment. Seventeen teachers stated that the concept of vector graphics in §126.33(c)(2)(F) is not appropriate for a first computer science course.

Response. The SBOE disagreed and determined that §126.33(c)(2)(F) was appropriate in content and rigor.

Comment. Sixteen teachers stated that the concept of displaying bitmap images in §126.33(c)(2)(G) is not appropriate for a first computer science course and should be deleted.

Response. The SBOE disagreed and determined that §126.33(c)(2)(G) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.33(c)(4)(D) and (c)(6)(E), (K), and (Q), object-oriented programming is not an appropriate concept for a first computer science course and should be deleted.

Response. The SBOE disagreed and determined that §126.33(c)(4)(D) and (c)(6)(E), (K), and (Q) were appropriate in content and rigor.

Comment. Sixteen teachers recommended that in §126.33(c)(4)(K), the term "biggest" be changed to "largest."

Response. The SBOE disagreed and determined that §126.33(c)(4)(K) was appropriate in language and content.

Comment. Sixteen teachers stated that most languages used for a first computer science course are strongly typed and result in compile errors, not runtime errors, therefore, in §126.33(c)(4)(M), the phrase "and type mismatch" should be deleted.

Response. The SBOE disagreed and determined that §126.33(c)(4)(M) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.33(c)(4)(Q) should be deleted because "assignment" is not a concept in an imperative language and is not necessary in functional languages.

Response. The SBOE disagreed and determined that §126.33(c)(4)(Q) was appropriate in language and content.

Comment. Sixteen teachers recommended that in §126.33(c)(4)(T), the word "iterative" be changed to "iterative or recursive."

Response. The SBOE disagreed and determined that §126.33(c)(4)(T) was appropriate in language and content.

Comment. Sixteen teachers recommended that §126.33(c)(6)(A) be changed to read, "understand that there are different types of programming languages and that different programming languages are often selected to solve specific types of problems."

Response. The SBOE disagreed and determined that §126.33(c)(6)(A) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.33(c)(6)(C), the phrase "differentiate among current programming languages, discuss the use of those languages in other fields of study, and" should be deleted as it is not appropriate for a first computer science course.
Comment. The SBOE disagreed and determined that §126.33(c)(6)(C) was appropriate in content and rigor.

Response. Sixteen teachers recommended that §126.33(c)(6)(F) be changed to read, "understand the scope of variables."

Response. The SBOE disagreed and determined that §126.33(c)(6)(F) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.33(c)(6)(G), the term "encapsulate" be changed to "combine" because "encapsulate" is an object-oriented programming term and is not appropriate for a first computer science course.

Response. The SBOE disagreed and determined that §126.33(c)(6)(G) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.33(c)(6)(H) and (I), the term "arguments and parameters" should be changed to "parameters."

Response. The SBOE disagreed and determined that §126.33(c)(6)(H) and (I) were appropriate in language and content.

Comment. Sixteen teachers recommended that §126.33(c)(6)(T) be deleted because the concept is already included in Computer Science II and is too complicated to be treated properly in the first computer science course.

Response. The SBOE disagreed and determined that §126.33(c)(6)(T) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.33(c)(6)(V), the concept of comparing and contrasting strongly typed and un-typed programming languages is not appropriate for a first computer science course and should be deleted.

Response. The SBOE disagreed and determined that §126.33(c)(6)(V) was appropriate in content and rigor.

Comment. One teacher recommended that Computer Science I be renamed Computer Science IIA. The commenter stated that Computer Science I has a widely used meaning that includes both existing computer science courses.

Response. The SBOE disagreed and determined that the course name was appropriate as proposed.

Comment. Fifteen teachers stated that the Computer Science I course should be renamed either Introduction to Computer Science or Fundamentals of Computer Science.

Response. The SBOE disagreed and determined that the course name was appropriate as proposed.

Comment. Sixteen teachers stated that in §126.34(c)(1)(C), Computer Science II, the phrase "and objects needed" should be deleted because it refers to object-oriented programming, which is not appropriate for this course.

Response. The SBOE disagreed and determined that §126.34(c)(1)(C) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(2)(C), graphical user interface is not an appropriate concept for the course and recommended that the student expectation be deleted.

Response. The SBOE disagreed and determined that §126.34(c)(2)(C) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(2)(D), the words "and functionality" should be deleted because style is not related to functionality.

Response. The SBOE disagreed and determined that §126.34(c)(2)(D) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.34(c)(1)(E), the words "including inheritance" should be deleted because they refer to object-oriented programming, which is not appropriate for this course.

Response. The SBOE disagreed and determined that §126.34(c)(1)(E) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(1)(F), the words "and objects" should be deleted because they refer to object-oriented programming, which is not appropriate for this course.

Response. The SBOE disagreed and determined that §126.34(c)(1)(F) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(1)(H), the language "use object-oriented programming development methodology, data abstraction, encapsulation with information hiding, and procedural abstraction in program development and testing" should be changed to read, "use data and procedural abstraction in program development."

Response. The SBOE disagreed and determined that §126.34(c)(1)(H) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.34(c)(2)(E) should be clarified or deleted because the term "optimizing data visualization" is unclear.

Response. The SBOE disagreed and determined that §126.34(c)(2)(E) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.34(c)(2)(F), vector graphics is not an appropriate concept for the course and suggested that the word "vector" be deleted.

Response. The SBOE disagreed and determined that §126.34(c)(2)(F) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(2)(G), the concept of displaying bitmap images is not appropriate for the course and the student expectation should be deleted.

Response. The SBOE disagreed and determined that §126.34(c)(2)(G) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(3)(B), the concept of programming file access is not appropriate for the course and the student expectation should be deleted.

Response. The SBOE disagreed and determined that §126.34(c)(3)(B) was appropriate in content and rigor.

Comment. Sixteen teachers recommended that in §126.34(c)(3)(F) and (G), the word "arrays" be changed to "lists."

Response. The SBOE disagreed and determined that §126.34(c)(3)(F) and (G) were appropriate in language and content.

Comment. Sixteen teachers stated that in §126.34(c)(3)(G), the concept of two-dimensional arrays are not critical for the course and the student expectation should be deleted.
Response. The SBOE disagreed and determined that §126.34(c)(3)(G) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(4)(H), a bubble sort is a poor sort and the term should be deleted.

Response. The SBOE disagreed and determined that §126.34(c)(4)(H) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(4)(I), the measurement of the time/space efficiency of sorting algorithms is not a critical activity and should be deleted.

Response. The SBOE disagreed and determined that §126.34(c)(4)(I) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.34(c)(4)(K) and (O), the concept of big-O notation should be deleted as the proper mathematical development of big-O is beyond the ability of most students at this level.

Response. The SBOE disagreed and determined that §126.34(c)(4)(K) and (O) were appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.34(c)(4)(M) should be modified to read, "testing data structures, subroutines" since classes and methods are object-oriented programming terms and not appropriate for the course.

Response. The SBOE disagreed and determined that §126.34(c)(4)(M) was appropriate in content and rigor.

Comment. Sixteen teachers recommended that in §126.34(c)(4)(R), the phrase "the mathematics library class" be changed to "a mathematics library."

Response. The SBOE disagreed and determined that §126.34(c)(4)(R) was appropriate in content and rigor.

Comment. Sixteen teachers recommended deleting §126.34(c)(4)(T)-(Z), (AA)-(GG), and (II)-(MM) because they each refer explicitly or implicitly to object-oriented programming, which is not appropriate for the course.

Response. The SBOE disagreed and determined that the student expectations were appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.34(c)(6)(A) should be changed to read, "understand that there are different types of programming languages and that different programming languages are often selected to solve specific types of problems."

Response. The SBOE disagreed and determined that §126.34(c)(6)(A) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.34(c)(6)(C) and (D) should be deleted as the course is not a networking course and the concepts are not critical.

Response. The SBOE disagreed and determined that §126.34(c)(6)(C) and (D) were appropriately included in the revised TEKS for the course.

Comment. One teacher stated that Computer Science II should be renamed Computer Science IIB. The commenter stated that Computer Science II more closely corresponds to the course content widely understood to be associated with Computer Science I, which includes both existing computer science courses.

Response. The SBOE disagreed and determined that the course name was appropriate as proposed.

Comment. Sixteen teachers recommended modifying the recommended grades for Computer Science II from Grades 11 and 12 to Grades 10-12 because many Grade 10 students can be successful in the equivalent course.

Response. The SBOE disagreed and determined that the recommended grade levels for Computer Science II were appropriate as proposed.

Comment. Eighteen teachers stated that the Computer Science II course should be renamed Computer Science I as it is a more appropriate name based on the content.

Response. The SBOE disagreed and determined that the course name was appropriate as proposed.

Comment. Two teachers and one college/university staff member recommended that in Computer Science II, general programming concepts be used instead of object-oriented programming concepts.

Response. The SBOE disagreed and determined that object-oriented programming was appropriately included in the revised TEKS for Computer Science II.

Comment. Two teachers and one college/university staff member stated that the Computer Science II course is riddled with object-oriented programming learning outcomes and many Java specific ones, which may not be appropriate content for the course.

Response. The SBOE disagreed and determined that object-oriented programming was appropriately included in the revised TEKS for Computer Science II.

Comment. One teacher stated that object-oriented programming, graphical user interface, big-O notation, and bubble sort should not be required components of the Computer Science II course and should be deleted.

Response. The SBOE disagreed and determined that the revised TEKS for Computer Science II were appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35, Computer Science III, the introduction should state that the course is primarily a data structures course.

Response. The SBOE disagreed and determined that the introduction of Computer Science III was appropriate as proposed.

Comment. Eighteen teachers recommended that Computer Science III be renamed Computer Science II. The commenter stated that the content of Computer Science III more closely corresponds to the course content widely understood to be associated with Computer Science II.

Response. The SBOE disagreed and determined that the course name was appropriate as proposed.

Comment. One teacher stated that graphical user interface, object-oriented programming, and references to Java-related terminology should be eliminated from the Computer Science III course.

Response. The SBOE disagreed and determined that graphical user interface, object-oriented programming, and references to Java-related terminology were appropriately included in the revised TEKS for Computer Science III.

Comment. Two teachers recommended allowing more flexibility in the Computer Science III course to change as programming languages change.
Response. The SBOE disagreed and determined that the revised TEKS for Computer Science III were appropriate as proposed.

Comment. Sixteen teachers recommended that in §126.35(a), "Advanced Placement (AP) Computer Science" should be changed to read, "Advanced Placement (AP) Computer Science A."

Response. The SBOE agreed and took action to change the course title to Advanced Placement (AP) Computer Science A.

Comment. Sixteen teachers stated that in §126.35(c)(1)(A), the word "encapsulation" should be deleted as it is an object-oriented programming term and is not appropriate for the course.

Response. The SBOE disagreed and determined that §126.35(c)(1)(A) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(1)(B), (C), and (E) should be deleted as they refer to object-oriented programming concepts, which are not appropriate for the course.

Response. The SBOE disagreed and determined that §126.35(c)(1)(B), (C), and (E) were appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35(c)(2)(B), the concept of graphical user interface is not appropriate for the course and should be deleted.

Response. The SBOE disagreed and determined that §126.35(c)(2)(B) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35(c)(2)(C), the words "and functionality" should be deleted as style is not related to functionality.

Response. The SBOE disagreed and determined that §126.35(c)(2)(C) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.35(c)(3)(A), the words "of objects" should be deleted as they refer to object-oriented programming, which is not appropriate for the course.

Response. The SBOE disagreed and determined that §126.35(c)(3)(A) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35(c)(3)(A) and (B), the word "arrays" should be changed to "arrays or lists."

Response. The SBOE disagreed and determined that §126.35(c)(3)(A) and (B) were appropriate in language and content.

Comment. Sixteen teachers recommended that in §126.35(c)(3)(C), references to objects be deleted because they refer to object-oriented programming, which is not appropriate for the course.

Response. The SBOE disagreed and determined that §126.35(c)(3)(C) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35(c)(3)(C), the words "including vector" should be deleted as not all programming languages have vectors.

Response. The SBOE disagreed and determined that §126.35(c)(3)(C) was appropriate in language and content.

Comment. Sixteen teachers recommended splitting §126.35(c)(3)(E) into two student expectations, "understand linked-list data structures, including unordered single, ordered single, double, and circular linked" and "create program solutions using a linked-list data structure."

Response. The SBOE disagreed and determined that §126.35(c)(3)(E) was appropriate as proposed.

Comment. Sixteen teachers stated that in §126.35(c)(3)(F), the phrase "of a linked list" should be changed to "of linked lists."

Response. The SBOE agreed. As a result, staff made appropriate technical edits.

Comment. Sixteen teachers stated that in §126.35(c)(3)(G), the phrase "graph theory" should be changed to "graphs."

Response. The SBOE disagreed and determined that §126.35(c)(3)(G) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.35(c)(3)(G) covers an enormous portion of the Computer Science III course and recommended splitting the student expectation into separate items for each different data structure.

Response. The SBOE disagreed and determined that §126.35(c)(3)(G) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35(c)(3)(H), the terms "HashSet" and "TreeSet" are Java language terms and should be deleted.

Response. The SBOE disagreed and determined that §126.35(c)(3)(H) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(4)(B) should be deleted as bitwise operators are low-level concepts that are not critical for the course.

Response. The SBOE disagreed and determined that §126.35(c)(4)(B) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.35(c)(4)(B) should be deleted as the term "do-while" is a Java language term and is not critical for this course.

Response. The SBOE disagreed and determined that §126.35(c)(4)(B) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(4)(C) should be deleted as the term "ternary operators" is a Java language term and is not critical for the course.

Response. The SBOE disagreed and determined that §126.35(c)(4)(C) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(4)(D) should be deleted as the term "ternary operators" is a Java language term and is not critical for the course.

Response. The SBOE disagreed and determined that §126.35(c)(4)(D) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(4)(H) should be deleted as regular expressions are not critical concepts.

Response. The SBOE disagreed and determined that §126.35(c)(4)(H) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.35(c)(4)(I), the terms "fractals, Towers of Hanoi, and magic square" are not central to a data structures course and should be deleted.

Response. The SBOE disagreed and determined that §126.35(c)(4)(I) was appropriate in content and rigor.
Comment. Sixteen teachers stated that §126.35(c)(4)(K) should be deleted as it relates to object-oriented programming and it is not a critical concept of the course.

Response. The SBOE disagreed and determined that §126.35(c)(4)(K) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(4)(L) and (M) should be deleted as they refer to object-oriented programming, which is not appropriate for the course.

Response. The SBOE disagreed and determined that §126.35(c)(4)(L) and (M) were appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.35(c)(6)(A) should be changed to read, "understand that there are different types of programming languages and that different programming languages are often selected to solve specific types of problems."

Response. The SBOE disagreed and determined that §126.35(c)(6)(A) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.35(c)(6)(B) and (C) should be deleted as Computer Science III is not a networking course and these concepts are not reasonable requirements.

Response. The SBOE disagreed and determined that §126.35(c)(6)(B) and (C) were appropriately included in the revised TEKS for Computer Science III.

Comment. Sixteen teachers stated that §126.35(c)(6)(D) should be deleted. The commenters added that Computer Science III is not a language survey course, therefore, including low-level or scripting languages is not a reasonable requirement.

Response. The SBOE disagreed and determined that §126.35(c)(6)(D) was appropriately included in the revised TEKS for Computer Science III.

Comment. Fifteen teachers stated that in §126.35(c)(6)(D), it is unclear what the term "discovery program" means.

Response. The SBOE disagreed and determined that §126.35(c)(6)(D) was appropriate in language and content.

Comment. Thirteen teachers stated that §126.36, Digital Forensics, should be eliminated or reworked.

Response. The SBOE disagreed and determined that the Digital Forensics course was appropriate as proposed.

Comment. Thirteen teachers stated that it appears that not enough thought had been given to the appropriateness of the content in Digital Forensics.

Response. The SBOE disagreed and determined that the Digital Forensics course was appropriate as proposed.

Comment. Thirteen teachers stated that there are questions regarding the prerequisite for Digital Forensics.

Response. The SBOE disagreed and determined that the prerequisite for the course was appropriate.

Comment. One college/university staff member stated that while it is an admirable idea to include the Digital Forensics course, it is usually a junior-level college elective, both from a content and pedagogical perspective.

Response. The SBOE disagreed and determined that Digital Forensics was an appropriate high school course.

Comment. One teacher and one college/university staff member stated that if interesting junior-level college courses such as Digital Forensics are to be offered in high school, the scope must be modified for a secondary school audience.

Response. The SBOE agreed and determined that the language of the TEKS for Digital Forensics is appropriately designed for high school students.

Comment. Three teachers recommended that §126.37, Discrete Mathematics, be allowed to satisfy the fourth mathematics credit for high school graduation.

Response. The SBOE disagreed and determined that Discrete Mathematics would not satisfy the fourth mathematics credit for graduation.

Comment. One teacher stated that the Discrete Mathematics course has too much content for a one-unit high school course.

Response. The SBOE disagreed and determined that Discrete Mathematics was appropriate in content.

Comment. Sixteen teachers expressed concern that no current high school certification is adequate for teaching Discrete Mathematics.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Sixteen teachers stated that digital citizenship does not apply to a mathematics course and recommended that the strand be deleted from the Discrete Mathematics course.

Response. The SBOE disagreed and determined that the digital citizenship strand was appropriate for the course.

Comment. Sixteen teachers stated that technology operations and concepts do not apply to a mathematics course and recommended that the strand be deleted from the Discrete Mathematics course and the individual student expectations be moved to other strands.

Response. The SBOE disagreed and determined that the technology operations and concepts strand was appropriate for the course.

Comment. Sixteen teachers stated that Computer Science III should not be a prerequisite for the Discrete Mathematics course.

Response. The SBOE offered the following clarification. The required prerequisite for Discrete Mathematics is Algebra II, not Computer Science III.

Comment. Seventeen teachers stated that Discrete Mathematics should be eliminated or reworked.

Response. The SBOE disagreed and determined that the Discrete Mathematics course was appropriate as proposed.

Comment. One teacher stated that Discrete Mathematics is an interdisciplinary field and is therefore appropriate to be included in the computer science discipline.

Response. The SBOE agreed and determined that Discrete Mathematics was appropriately included in the revised computer science TEKS.

Comment. Fifteen teachers stated that it appears that not enough thought had been given to the appropriateness of the content in Discrete Mathematics.

Response. The SBOE disagreed and determined that the Discrete Mathematics course was appropriate as proposed.
Comment. Sixteen teachers recommended that in §126.37(b)(2), the words "the tools" be changed to "tools."

Response. The SBOE disagreed and determined that the words "the tools" were appropriate in §126.37(b)(2).

Comment. Sixteen teachers stated that Discrete Mathematics is a mathematics course, therefore, much of the six strands based on the National Educational Technology Standards for Students (NETS-S) and the performance indicators developed by the International Society for Technology in Education (ISTE) are not applicable to this course.

Response. The SBOE disagreed and determined that the strands were appropriate for the course.

Comment. Sixteen teachers stated that in §126.37(b)(2), the language "exposure to the mathematical concepts and discrete structures presented in this course is essential in order to provide an adequate foundation for further study" is not informative and should be replaced with "the mathematical concepts and discrete structures presented in this course are essential to the understanding of advanced computer science concepts."

Response. The SBOE disagreed and determined that §126.37(b)(2) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.37(b)(2) and (c)(2)(B), the terms "functions, relations, and sets" should be reordered to read, "sets, functions, and relations," which is the logical ordering of the topics.

Response. The SBOE agreed. As a result, staff made appropriate technical edits.

Comment. Sixteen teachers stated that in §126.37(b)(2), "see computational problems" should be changed to "understand computational problems."

Response. The SBOE disagreed and determined that §126.37(b)(2) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.37(b)(2), the meaning of "and expectations" is unclear and should be deleted.

Response. The SBOE disagreed and determined that §126.37(b)(2) was appropriate in language and content.

Comment. Sixteen teachers stated that §126.37(c)(2)(C) should be deleted as the Master Theorem is an advanced concept that is normally not even taught in a university-level discrete mathematics course and is inappropriate for this level.

Response. The SBOE disagreed and determined that §126.37(c)(2)(C) was appropriate in content and rigor.

Comment. Sixteen teachers stated that §126.37(c)(2)(E) should be deleted or clarified as there is no context to understand what "associated operations and terminology in context" means.

Response. The SBOE disagreed and determined that §126.37(c)(2)(E) was appropriate in content and clarity.

Comment. Sixteen teachers stated that in §126.37(c)(3)(A), the concept of displaying bitmap operators is not appropriate for the course and should be deleted.

Response. The SBOE disagreed and determined that §126.37(c)(3)(A) was appropriate in content and rigor.

Comment. Sixteen teachers stated that in §126.37(c)(4)(A) and (6)(A), the term "sets, functions, and relations" should be reordered to read, "sets, relations, and functions."

Response. The SBOE disagreed and determined that §126.37(c)(4)(A) and (6)(A) were appropriate in content and clarity.

Comment. Sixteen teachers stated that in §126.37(c)(6)(C), the term "precedence" should be changed to "order of operations" because precedence applies to programming language operators, not mathematics operators.

Response. The SBOE disagreed and determined that §126.37(c)(6)(C) was appropriate in language and content.

Comment. Sixteen teachers stated that in §126.37(c)(6)(M), the term "data structures" should be deleted as students do not have the requisite knowledge for this concept.

Response. The SBOE disagreed and determined that §126.37(c)(6)(M) was appropriate in content and rigor.

Comment. One teacher and one college/university staff member expressed concern that the expectations in §126.38(c)(6)(O)-(R), Game Programming and Design, may be too difficult and complex for a high school student to produce in a reasonable amount of time.

Response. The SBOE disagreed and determined that the revised TEKS for Game Programming and Design were appropriate in content and complexity.

Comment. One teacher and one college/university staff member expressed concern regarding the scope of Game Programming and Design and recommended separating the programming and design components of the proposed course into two separate courses.

Response. The SBOE disagreed and determined that the programming and design components were appropriately included in one course.

Comment. Fourteen teachers stated that Game Programming and Design should be eliminated or reworked.

Response. The SBOE disagreed and determined that the course was appropriate as proposed.

Comment. Thirteen teachers stated that it appears that not enough thought had been given to the appropriateness of the content in the Game Programming and Design course.

Response. The SBOE disagreed and determined that the course was appropriate as proposed.

Comment. One college/university staff member expressed concern regarding the prerequisite for Game Programming and Design.

Response. The SBOE disagreed and determined that the prerequisite was appropriate as proposed.

Comment. One college/university staff member stated that while it is an admirable idea to include Game Programming and Design, it is usually a junior-level college elective, both from a content and pedagogical perspective.

Response. The SBOE disagreed and determined that Game Programming and Design was an appropriate high school course.

Comment. One college/university staff member expressed concern that Algebra I is the only prerequisite for Game Programming and Design, a course that requires trigonometric functions.
Response. The SBOE disagreed and determined that the prerequisite for Game Programming and Design was appropriate as proposed.

Comment. One teacher stated that incorporating some game design principles into a core computer science course is more appropriate than offering the Game Programming and Design course.

Response. The SBOE disagreed and determined that Game Programming and Design was appropriately included as a separate course rather than including the topics within a computer science course.

Comment. One teacher expressed concern that computer science is not a prerequisite for Game Programming and Design. The commenter added that this would require teachers to cover basic programming skills that overlap with the proposed Computer Science I.

Response. The SBOE disagreed and determined that the prerequisite for Game Programming and Design was appropriate as proposed.

Comment. One teacher expressed concern with §126.39(c)(1)(B), Mobile Application Development, because students are expected to produce both a web-based and device-based program, which are vastly different tasks.

Response. The SBOE disagreed and determined that the student expectation was appropriate in content and complexity.

Comment. One teacher expressed concerns regarding Game Programming and Design and Mobile Application Development, which may be obsolete by the time the TEKS are revised again.

Response. The SBOE disagreed and determined that the TEKS for Game Programming and Design and Mobile Application Development were appropriate.

Comment. One teacher and one college/university staff member stated that the TEKS for Mobile Application Development are more reasonable in scope and content than the TEKS for the Game Programming and Design course.

Response. The SBOE disagreed and determined that the TEKS for both courses were appropriate in scope and content.

Comment. Twelve teachers stated that Mobile Application Development should be eliminated or reworked.

Response. The SBOE disagreed and determined that the course was appropriate as proposed.

Comment. Thirteen teachers stated that it appears that not enough thought had been given to the appropriateness of the content in the Mobile Application Development course.

Response. The SBOE disagreed and determined that the Mobile Application Development course was appropriate in content.

Comment. Fourteen teachers stated that there are questions regarding the prerequisites for Mobile Application Development. The SBOE disagreed and determined that the prerequisites for Mobile Application Development were appropriate as proposed.

Comment. One teacher expressed support for the inclusion of Mobile Application Development, in its current form, but stated that the TEKS are constraining. The commenter added that a more general set of course requirements would be extremely helpful.

Response. The SBOE agreed with the comment supporting the inclusion of Mobile Application Development. However, the SBOE disagreed with the comment that the revised TEKS are constraining and determined that the revised TEKS are appropriate in content.

Comment. One teacher expressed concern that computer science is not a prerequisite for Mobile Application Development. The commenter added that this would require teachers to cover basic programming skills that overlap with the proposed Computer Science I.

Response. The SBOE disagreed and determined that the prerequisites for Mobile Application Development were appropriate as proposed.

Comment. One teacher and one college/university staff member stated that the technology applications courses for computer science should focus on relevant, core courses in lieu of offering many different courses.

Response. The SBOE disagreed and determined that the number of course offerings for computer science was appropriate as proposed.

Comment. Sixteen teachers stated that the proposed computer science TEKS are substantially improved over the draft version, but they still need refinement.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Five teachers and one community member expressed support for the adoption of the proposed computer science TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Five teachers and one college/university staff member opposed the adoption of the proposed computer science TEKS.

Response. The SBOE disagreed and determined that the computer science TEKS were adequate and appropriate and took action to adopt the proposed revisions to the standards as amended.

Comment. Nineteen teachers opposed the adoption of the proposed TEKS for Fundamentals of Computer Science, Computer Science I, Computer Science II, Computer Science III, Digital Forensics, Discrete Mathematics, Game Programming and Design, Mobile Application Development, and Robotics Programming and Design and the proposed new 19 TAC Chapter 126, Subchapter D, because they are problematic as proposed.

Response. The SBOE disagreed and determined that the revised TEKS for Fundamentals of Computer Science, Computer Science I, Computer Science II, Computer Science III, Digital Forensics, Discrete Mathematics, Game Programming and Design, Mobile Application Development, and Robotics Programming and Design and the proposed new 19 TAC Chapter 126, Subchapter D, were adequate and appropriate and took action to adopt the proposed revisions to the standards as amended.

Comment. Sixteen teachers stated that the computer science TEKS should be flexible enough to be compatible with the new national standards in computer science.
Response. The SBOE agreed and determined that the revised computer science TEKS were flexible and appropriate.

Comment. Two teachers recommended delaying the adoption of the computer science TEKS until after the national computer science standards are in place.

Response. The SBOE disagreed and determined that the TEKS were adequate and appropriate and took action to adopt the proposed revisions to the standards as amended.

Comment. Sixteen teachers stated that the cost of rewriting standards is high, but the cost of writing inflexible standards is even higher.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Seventeen teachers and one college/university staff member stated that requiring that students understand graphical user interface and images limits the time available in computer science courses for more important concepts and recommended eliminating these requirements.

Response. The SBOE disagreed and determined that graphical user interface and images were appropriately included in the revised computer science TEKS.

Comment. Sixteen teachers and one college/university staff member stated that the revised computer science TEKS are too detailed and restrictive.

Response. The SBOE disagreed and determined that the revised computer science TEKS were appropriate in content and rigor.

Comment. One college/university staff member stated that bitmaps specific and algorithms are too restrictive to be included in the computer science TEKS.

Response. The SBOE disagreed and determined that bitmaps specific and algorithms were appropriately included in the revised computer science TEKS.

Comment. One college/university staff member stated that the computer science TEKS are too ambitious and advanced and cover too much material for high school.

Response. The SBOE disagreed and determined that the revised computer science TEKS were appropriate in content and complexity.

Comment. One college/university staff member stated that the TEKS for computer science need additional scoping revisions and external verification for plausibility.

Response. The SBOE disagreed and determined that the SBOE process for review and revision of the TEKS included numerous opportunities for external review and input and that the revised TEKS for computer science were appropriate as proposed.

Comment. One college/university staff member stated that the current TEKS for computer science align well with the Association for Computing Machinery (ACM) Model Curriculum for K-12 Computer Science; are flexible enough to allow different programming languages, pedagogical approaches, and courses; and are also rigorous enough to prepare students to be successful on the AP Computer Science exam.

Response. The SBOE agreed but determined that the proposed revisions to the TEKS for computer science were appropriate. The SBOE took action to adopt the proposed revisions.

Comment. One teacher stated that object-oriented programming is in the AP curriculum guide for computer science and in the existing career and technical education TEKS for the Computer Programming and Advanced Computer Programming courses.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One college/university staff member stated that Texas has a long history of delivering excellent courses to students who go on to be successful in computer science, but the revised TEKS do not adequately reflect that tradition.

Response. The SBOE disagreed and determined that the revised computer science TEKS were appropriate in content and rigor.

Comment. One teacher expressed concern that the revised TEKS would be detrimental to the future of computer science education in Texas.

Response. The SBOE disagreed and determined that the revised computer science TEKS were appropriate in content and rigor.

Comment. One teacher stated that computer science changes rapidly, therefore, the TEKS should be broader.

Response. The SBOE disagreed and determined that the revised TEKS for computer science were sufficiently broad.

Comment. One teacher stated that the proposed TEKS are not in alignment with what is necessary for an AP computer science program and would conflict with what needs to be taught.

Response. The SBOE disagreed and determined that the revised TEKS for computer science were appropriate in content and rigor.

Comment. One teacher provided summaries of the opinions of college and university professors regarding the inclusion of object-oriented programming in computer science.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that the current TEKS for computer science should not be changed.

Response. The SBOE disagreed and determined that the proposed revisions to the TEKS were adequate and appropriate and took action to adopt the proposed revisions to the standards as amended.

Comment. Two teachers recommended that the adoption of the TEKS should be put on hold so that the input of teachers and others can be considered more fully.

Response. The SBOE disagreed and determined that the SBOE process for review and revision of the TEKS included numerous opportunities for review and input from teachers and others and that the TEKS were adequate and appropriate. The SBOE took action to adopt the proposed revisions to the standards as amended.

Comment. One teacher recommended postponing the adoption of the revisions to the computer science TEKS, reverting back to the current computer science TEKS, and considering a new committee to revisit the revisions to the TEKS.

Response. The SBOE disagreed and determined that the TEKS were adequate and appropriate and took action to adopt the proposed revisions to the standards as amended.
Comment. One teacher stated that the computer science TEKS were written to parallel the Texas Common Course Number System (TCCNS) and to change them would negatively affect that alignment.

Response. The SBOE disagreed and determined that the TEKS were adequate and appropriate and took action to adopt the proposed revisions to the standards as amended.

Comment. One teacher stated that this is the first time the computer science TEKS have been applicable to the curriculum that teachers actually teach in the state of Texas.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that the proposed computer science TEKS have rigor and relevance and open the door for future programming classes.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that the proposed computer science TEKS should focus on relevant core classes in computer science to better address the reduced number of electives that students can take with the current four-by-four requirements.

Response. The SBOE disagreed and determined that the revised computer science TEKS are relevant and appropriate.

Comment. One teacher stated that in order to be most effective, the TEKS should focus on what is to be taught, not how it is to be taught.

Response. The SBOE agreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One college/university staff member expressed concern that high schools do not have the resources to teach the Digital Forensics, Game Programming and Design, and Mobile Application Development courses.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher expressed hope that the Computer Science Education Act and the many efforts of the ACM will be considered in the TEKS revisions.

Response. The SBOE agreed and determined that the revised TEKS are adequate and appropriate.

Comment. Two teachers expressed concern that high schools will have difficulty finding well-qualified teachers for the new courses.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One community member suggested that the computer science TEKS be revised more frequently in order to keep pace with new developments in the field.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One community member stated that students need the problem-solving skills addressed in the proposed computer science TEKS.

Response. The SBOE agreed and determined that the revised computer science TEKS appropriately addressed problem-solving skills.

Comment. Nineteen teachers stated that §126.49, Independent Study in Technology Applications, can be used instead of specifying special topic courses in computer science. Independent Study will also allow students to study the newest innovations in computer science.

Response. The SBOE disagreed and determined that additional computer science courses were appropriate. The SBOE offered the following clarification. Independent study options in technology applications remain available to students.

Comment. One teacher stated that she is the only computer science teacher in her district who uses object-oriented programming from the first day.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that object-oriented programming is a concept and a paradigm, not a specific language, and should be taught in computer science courses.

Response. The SBOE agreed and determined that object-oriented programming is appropriately included in the revised computer science TEKS.

Comment. One teacher stated that graphical user interface should be included in the computer science TEKS.

Response. The SBOE agreed and determined that graphical user interface is appropriately included in revised computer science TEKS.

Comment. Twenty-two teachers and one college/university staff member stated that the proposed computer science TEKS need to remain general and flexible enough to adapt to new trends in computer science or else they will require substantial revision any time there is a teaching language or programming paradigm change.

Response. The SBOE disagreed and determined that the revised computer science TEKS were appropriate and flexible.

Comment. Seventeen teachers stated that the computer science TEKS should be silent on programming language features, programming paradigms, and other pedagogical details.

Response. The SBOE disagreed and determined that programming language features and programming paradigms were appropriately addressed in the revised computer science TEKS. The SBOE also determined that the revised TEKS do not address specific pedagogy.

Comment. Twenty teachers and one college/university staff member stated that many universities are moving away from object-oriented programming at the introductory level and recommended that general programming concepts be specified, either instead of or in addition to object-oriented programming.

Response. The SBOE agreed and determined that the revised computer science TEKS appropriately addressed general programming concepts in addition to object-oriented programming.

Comment. Five teachers and two college/university staff members stated that the proposed TEKS at the introductory level need to be closely examined and made as paradigm- and language-neutral as possible.
Response. The SBOE disagreed and determined that the prerequisite for Robotics Programming and Design was appropriate as proposed.

Comment. One teacher expressed concern with the addition of §126.41(c)(6)(G) and (H), Digital Design and Media Production. The commenter stated that requiring the use of video technology takes precious time away from a course that is focused on design.

Response. The SBOE disagreed and determined that the language of the student expectations was appropriate in content and scope.

Comment. Two teachers expressed support for the new standards for Digital Design and Media Production.

Response. The SBOE agreed and adopted the rule as proposed.

Comment. One teacher stated that there are several typos in the TEKS for Digital Design and Media Production. The commenter recommended changing the word "pica" to the word "pixels" when talking digital media.

Response. The SBOE disagreed and determined that the word "picas" in the TEKS for Digital Design and Media Production was appropriately used.

Comment. One teacher asked if §126.42, Digital Art and Animation, would be allowed to satisfy the fine arts graduation requirement.

Response. The SBOE provided the following clarification. Digital Art and Animation will be allowed to satisfy the high school fine arts graduation requirement.

Comment. One teacher asked if §126.44, Digital Communications in the 21st Century, will require certification in technology applications, speech, or both.

Response. The SBOE provided the following clarification. Decisions regarding certification requirements for teaching assignments are made by the State Board for Educator Certification.

Comment. Twelve teachers, one community member, and three college/university staff members expressed opposition to allowing Digital Communications in the 21st Century to fulfill the speech graduation requirement.

Response. The SBOE agreed and took action to amend §126.44(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. Sixteen teachers, one community member, and three college/university staff members stated that there are many skills from speech courses that are not included in the proposed TEKS for Digital Communications in the 21st Century, therefore, it should not fulfill the speech graduation requirement.

Response. The SBOE agreed and took action to amend §126.44(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. One teacher stated that Texas students deserve the in-depth instruction that speech courses taught by qualified communication professionals provide, which are not provided by the proposed TEKS for Digital Communications in the 21st Century.

Response. This comment is outside the scope of the proposed rulemaking.
Comment. Two teachers expressed concern that Digital Communications in the 21st Century is recommended to satisfy the speech graduation requirement but focuses only on digital communication.

Response. The SBOE agreed and took action to amend §126.44(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. One teacher stated that the TEKS for Digital Communications in the 21st Century are vague and not aligned with the Communication Applications course.

Response. The SBOE agreed and took action to amend §126.44(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. One teacher stated that in §126.45, Digital Video and Audio Design, subsection (c)(9)(H), related to linear and nonlinear editing, is outdated and not relevant to digital video and design.

Response. The SBOE disagreed and determined that the student expectation was appropriate and relevant.

Comment. One teacher stated that the proposed TEKS for Digital Video and Audio Design are vague and should include the following topics: managing digital media assets (audio/video files), troubleshooting technical issues, selecting and utilizing various software programs needed to produce video projects, tapeless workflow, camera stabilization techniques, utilizing key frames to manipulate and/or animate audio/video assets within a project, microphone selection, and understanding various video compression formats.

Response. The SBOE disagreed and determined that the topics included in the TEKS for Digital Video and Audio Design were appropriate as proposed.

Comment. Eleven teachers, one community member, and three college/university staff members expressed opposition to allowing §126.46, Web Communications, to fulfill the speech graduation requirement.

Response. The SBOE agreed and took action to amend §126.46(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. Sixteen teachers, one community member, and three college/university staff members stated that there are many skills from speech courses that are not included in the proposed TEKS for Web Communications, therefore, it should not fulfill the speech graduation requirement.

Response. The SBOE agreed and took action to amend §126.46(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. One teacher stated that Texas students deserve the in-depth instruction that speech courses taught by qualified communication professionals provide that are not provided by Web Communications.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Two teachers expressed concern that Web Communications is recommended to satisfy the speech graduation requirement but focuses only on digital communication.

Response. The SBOE agreed and took action to amend §126.46(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. One teacher stated that the TEKS for Web Communications are vague and not aligned with the Communication Applications course.

Response. The SBOE agreed and took action to amend §126.46(a) to strike the sentence, "This course satisfies the high school speech graduation requirement."

Comment. One teacher stated that Web Communications should be a prerequisite for §126.47, Web Design, because students often lack the basic skills required for the Web Design course.

Response. The SBOE disagreed and determined that Web Design did not require any prerequisites.

Comment. One teacher stated that if college credit is available for the completion of the Web Design course, the recommended grade levels should be limited to Grades 11 and 12 since students in Grades 9 and 10 may be ineligible to earn college credit.

Response. The SBOE disagreed and determined that the recommended grade levels for Web Design were appropriate as proposed.

Comment. One teacher stated that §126.48, Web Game Development, should not be available to satisfy the fine arts graduation requirement when digital and media production is used by nearly everyone every day.

Response. The SBOE agreed and took action to amend §126.48(a) to strike the language that would have allowed Web Game Development to satisfy the fine arts graduation requirement.

Comment. One teacher stated that in §126.48(c)(1), it is unclear if students are to develop the game or the website the game sits on, which are two different skills.

Response. The SBOE disagreed and determined that §126.48(c)(1) was appropriate in language and clarity.

Comment. One teacher expressed concern with §126.48(c)(2)(A) and stated that webinars are not related to game development.

Response. The SBOE disagreed and determined that §126.48(c)(2)(A) was appropriate in content.

Comment. One teacher expressed concern that in §126.48(c)(2)(C), distance learning, virtual learning, and online learning are each required, while the terms are used interchangeably in college-level courses.

Response. The SBOE disagreed and determined that §126.48(c)(2)(C) was appropriate in language and content.

Comment. One teacher stated that §126.48(c)(3)(A) and (C) are not appropriate concepts for the course.

Response. The SBOE disagreed and determined that §126.48(c)(3)(A) and (C) were appropriate in content and rigor.

Comment. One teacher stated that in §126.48(c)(3)(D), differentiating between Common Gateway Interface (CGI) and computer-generated imagery (CGI) does not make sense because they are two unrelated concepts and cannot be compared.
Response. The SBOE disagreed and determined that §126.48(c)(3)(D) was appropriate in language and content.

Comment. One teacher stated that in §126.48(c)(3)(G), analyzing and discussing the history of gaming is an overly broad expectation.

Response. The SBOE disagreed and determined that §126.48(c)(3)(G) was appropriate in content.

Comment. One teacher stated that in §126.48(c)(3)(I), the terms "console, personal computer, mobile, and web" all refer to computers; they only display games differently.

Response. The SBOE disagreed and determined that §126.48(c)(3)(I) was appropriate in language and content.

Comment. One teacher stated that the concepts in §126.48(c)(3)(J) are not comparable.

Response. The SBOE disagreed and determined that §126.48(c)(3)(J) was appropriate in language and content.

Comment. One teacher expressed concern with including the concept of e-commerce in §126.48(c)(3)(K) in a course on game development.

Response. The SBOE disagreed and determined that §126.48(c)(3)(K) was appropriate in content and relevance.

Comment. One teacher stated that in §126.48(c)(3)(N), the concept of historical and contemporary styles of art as applied to website development is more related to the website than the game itself.

Response. The SBOE disagreed and determined that §126.48(c)(3)(N) was appropriate in content and relevance.

Comment. One teacher stated that in §126.48(c)(4)(A), selecting an appropriate web programming language based on given criteria is a determination that should be made by the district and/or campus based on resources available for the course.

Response. The SBOE agreed and determined that §126.48(c)(4)(A) allowed appropriate flexibility in the selection of web programming languages.

Comment. One teacher stated that in §126.48(c)(4)(B), developing a database seems unnecessary.

Response. The SBOE disagreed and determined that §126.48(c)(4)(B) was appropriate in content and relevance.

Comment. One teacher expressed concern that §126.48(c)(4)(C) is too complex and requires resources that most districts do not have.

Response. The SBOE disagreed and determined that §126.48(c)(4)(C) was appropriate in content and rigor.

Comment. One teacher stated that §126.48(c)(6)(A) would be more appropriate in a general web development class. The commenter added that it is unrealistic to teach both the client side and server side in one year.

Response. The SBOE disagreed and determined that §126.48(c)(6)(A) was appropriate in content and rigor.

Comment. One teacher stated that §126.48(c)(6)(A) is too complex and requires resources that most districts do not have.

Response. The SBOE disagreed and determined that §126.48(c)(6)(A) was appropriate in content and rigor.

Comment. One teacher stated that §126.48(c)(6)(B) could easily be a year-long course on its own.

Response. The SBOE disagreed and determined that §126.48(c)(6)(B) was appropriate in content and rigor.

Comment. One teacher stated that Voice-Over-Internet Protocol (VoIP) is listed twice in the proposed TEKS for Web Game Development and questioned why the concept is considered important for this course.

Response. The SBOE disagreed and determined that the concept of VoIP was appropriately included in the revised TEKS in Web Game Development.

Comment. One teacher stated that, as written, it does not seem possible for Web Game Development to be taught in a single year.

Response. The SBOE disagreed and determined that the revised TEKS for Web Game Development were appropriate in content and rigor.

Comment. One teacher stated that the proposed TEKS for Web Game Development seem to be a mix of various other courses without understanding how the concepts fit together.

Response. The SBOE disagreed and determined that the revised TEKS for Web Game Development were appropriate in content and relevance.

Comment. One teacher stated that there is no real need for two different game development courses, Web Game Development and Game Programming and Design.

Response. The SBOE disagreed and determined that both Web Game Development and Game Programming and Design were appropriately included in the revised technology applications TEKS.

Comment. One teacher stated that computer science should be a prerequisite for Web Game Development. The commenter added that teachers should not cover basic programming skills that overlap with Computer Science I.

Response. The SBOE disagreed and determined that the prerequisite for Web Game Development was appropriate as proposed.

Comment. One teacher expressed support for the inclusion of Web Game Development in its current form, but stated that the proposed TEKS need to be more general.

Response. The SBOE disagreed and determined that the revised TEKS for Web Game Development were appropriate in language and content.

Comment. One teacher expressed concern regarding the list of topics to be studied for the Independent Study courses and recommended that for such a course to truly be independent study, very few topics should be specified.

Response. The SBOE disagreed and determined that the topics included in the Independent Study courses were appropriate as proposed.

Comment. Two teachers stated that because the technologies for some of the proposed new high school courses evolve so rapidly, they would be better suited as topics in one of the Independent Study courses.
Response. The SBOE disagreed and determined that the topics warranted new courses rather than offering the topics through Independent Study in Technology Applications.

Comment. Eleven teachers expressed support for the inclusion of 21st century skills in the proposed TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three teachers stated that teachers may need some clarification of specific 21st century skills that students should be able to perform.

Response. The SBOE agreed and determined that clarification of specific skills was appropriately provided in the revised TEKS.

Comment. One teacher stated that it would be beneficial to get the corporate world involved in "real" technology in junior high and high school so that students can see a real purpose to and application of 21st century technology instruction.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that slow learners will have difficulty meeting the 21st century skill expectations and will be challenged to keep up with peers.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Thirty teachers expressed support for the inclusion of digital citizenship as a strand in the TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that the student expectations that focus on digital citizenship will help students learn to cite their work and comply with the fair use guidelines and copyright laws.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that Gaggle is an example of a good program that allows students to collaborate and communicate with peers.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that technology is very important for students’ future success, therefore, teachers must ensure that it is introduced and utilized as much as possible.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher recommended that statewide technology vocabulary lists should be created for each grade level so that students and educators use the same terminology.

Response. The SBOE provided the following clarification. Appropriate information related to vocabulary should be provided during curriculum development and professional development.

Comment. Three teachers expressed concerns about implementing the TEKS if technology budgets are cut and equipment and resources are limited.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Two teachers expressed concern that with the current budget issues, "anywhere, anytime" access to the Internet may not be possible for most districts since it seems to require a computer or handheld device for every student.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher expressed concern that educating students about different operating systems requires access to and interacting with multiple systems, which may not be possible due to limited funds.

Response. The SBOE agreed and determined that the revised TEKS do not require students to interact with multiple operating systems.

Comment. One teacher asked if the proposed TEKS are realistic considering current budget concerns and the fact that many districts and schools do not have technology instructors. The commenter recommended that districts use the professional development days before school starts for technology training to ensure that teachers can successfully teach the standards.

Response. The SBOE provided the following clarification. Appropriate information related to providing instruction in the revised TEKS should be provided during curriculum development and professional development.

Comment. One teacher stated that the proposed TEKS will be challenging for some teachers, but that students need to be exposed to new technology.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher recommended that new resources should be provided in conjunction with the TEKS to ensure districts have the resources, skills, and knowledge to teach new technology and students have the tools to access it.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that students who are not exposed to technology in their homes have difficulty keeping up with all the skills that need to be mastered.

Response. The SBOE disagreed and determined that the revised TEKS reflect appropriate skill requirements for all students.

Comment. One teacher stated that adopting the new TEKS would require massive changes in curriculum, including textbooks, at a time when the budgets of all school districts are in a crisis.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that technology applications should be a graduation requirement for all high school students given that one day students will have jobs that require them to have these skills.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher recommended substituting "interactive media" for "web" in course titles based on the expansion of mobile media production, interactive media production, and application development.
Response. The SBOE disagreed and determined that the use of the word "web" in course titles was appropriate.

Comment. One teacher stated that the future is not web development but iPad and tablet publishing, mobile media production, and interactive media.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher expressed concern regarding the creativity and innovation and communication and collaboration strands.

Response. The SBOE disagreed and determined that the creativity and innovation and communication and collaboration strands in the revised TEKS were appropriate.

Comment. Three teachers expressed support for the inclusion of the creativity and innovation strand.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two teachers expressed support for the inclusion of the communication and collaboration strand.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the inclusion of the research and information fluency strand.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two teachers expressed support for the inclusion of the critical-thinking, problem-solving, and decision-making strand.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed concern regarding the restrictive nature and excessive number of courses included in the proposed TEKS.

Response. The SBOE disagreed and determined that the proposed courses were appropriate in flexibility and in number.

Comment. Two teachers and one college/university staff member stated that there are too many high school courses in technology applications.

Response. The SBOE disagreed and determined that the number of high school courses in technology applications was appropriate.

Comment. One college/university staff member expressed concern that the TEKS for the proposed new high school courses are overly constraining and overly ambitious.

Response. The SBOE disagreed and determined that the new courses were appropriate.

Comment. Thirteen teachers stated that college faculty with expertise in these fields and experience teaching the new courses proposed for high school must be consulted to ensure the validity of the proposed new courses.

Response. The SBOE disagreed and determined that the new courses were appropriately included.

Comment. One teacher stated that it previously made sense to talk about these additional topics in computer science to provide students with exposure to them. The commenter added, however, that some of these new high school course offerings seem to overlap with CTE courses.

Response. The SBOE disagreed and determined that the high school courses are sufficiently distinct from courses in other subject areas.

Comment. One teacher expressed support for the revisions to the technology applications TEKS that have been made since the initial draft was released.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Fifteen teachers expressed support for the revisions to the technology applications TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three teachers stated that the proposed TEKS are fair and appropriate and well written.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two teachers stated that the revisions will allow the classroom teacher to teach the TEKS for technology applications across the curriculum.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher stated that the revisions build upon prior knowledge to develop new ideas.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the alignment of the TEKS with the National Educational Technology Standards for Students (NETS-S) by the International Society for Technology in Education (ISTE).

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the inclusion of collaboration with others through blogs, wikis, and/or audio/video communications in the TEKS.

Response. The SBOE agreed with the comment regarding audio/video communications. The SBOE disagreed with the comment regarding blogs and wikis. The SBOE determined that the use of blogs and wikis is not required in the revised TEKS.

Comment. One teacher stated that the proposed TEKS do a great job of keeping up with the growing use of technology in society.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the current TEKS and the flexibility they provide to meet the needs of students and address changes in the technology industry.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One administrator stated that there is an absence of vertical alignment and controlled vocabulary across the grade levels.
Response. The SBOE disagreed and determined that vertical alignment and controlled vocabulary are appropriately provided throughout the revised TEKS.

Comment. Thirteen teachers stated that in 19 TAC Chapter 126, Subchapter D, course names, credit hours, and prerequisites need to be changed to be consistent with the Advanced Placement (AP) and International Baccalaureate (IB) course descriptions.

Response. The SBOE agreed and took action to amend the title of §126.62 to read, "Advanced Placement (AP) Computer Science A (One to Two Credits), Beginning with School Year 2012-2013; §126.62(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II, or a student should be comfortable with functions and the concepts found in the uses of functional notation such as f(x) = x + 2 and f(x) = g(h(x)); the title of §126.63 to read, "International Baccalaureate (IB) Computer Science, Standard Level (One to Two Credits), Beginning with School Year 2012-2013; §126.63(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II"; the title of §126.64 to read, "International Baccalaureate (IB) Computer Science, Higher Level (One to Two Credits), Beginning with School Year 2012-2013"; and §126.64(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.""

Comment. One teacher stated that it seems unnecessary to have two courses as prerequisites for §126.62, Advanced Placement (AP) Computer Science A.

Response. The SBOE disagreed. In response to other comments, the SBOE took action to amend §126.62(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II, or a student should be comfortable with functions and the concepts found in the uses of functional notation such as f(x) = x + 2 and f(x) = g(h(x))."

Comment. One teacher recommended that Pre-AP Geometry be allowed as a prerequisite for AP Computer Science.

Response. The SBOE disagreed. In response to other comments, the SBOE took action to amend §126.62(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II, or a student should be comfortable with functions and the concepts found in the uses of functional notation such as f(x) = x + 2 and f(x) = g(h(x))."

Comment. Thirteen teachers stated that the prerequisites for IB Computer Science, Standard Level, should be changed to read, "prerequisite requirements for IB Computer Science, Standard Level are prescribed in the IB Computer Science Guide, published by the International Baccalaureate Corporation." The commenters added that there are currently no prescribed prerequisites.

Response. The SBOE disagreed and determined that the recommended prerequisites were appropriate as proposed. In response to other comments, the SBOE took action to amend §126.63(a) to read "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.""

Comment. Thirteen teachers stated that in IB Computer Science, Higher Level, the credit awarded should be two credits rather than one to one and one-half credits.

Response. The SBOE disagreed. In response to other comments, the SBOE took action to amend the title of §126.62 to read, "International Baccalaureate (IB) Computer Science, Higher Level (One to Two Credits), Beginning with School Year 2012-2013"; and §126.64(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.""

Comment. Thirteen teachers stated that in IB Computer Science, Higher Level, the prerequisites should be changed to read, "prerequisite requirements for IB Computer Science, Higher Level are prescribed in the IB Computer Science Guide, published by the International Baccalaureate Corporation." The commenters added that there are currently no prescribed prerequisites.

Response. The SBOE disagreed and determined that the recommended prerequisites were appropriate as proposed. In response to other comments, the SBOE took action to amend §126.62(a) to read, "General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.""

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.1, 126.5 - 126.7

The amendment and new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment and new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

§126.6. Technology Applications, Kindergarten-Grade 2, Beginning with School Year 2012-2013.

(a) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students use creative thinking and innovative processes to construct knowledge and develop products. Students communicate and collaborate both locally and globally to reinforce and promote learning. Research and information fluency includes the acquisition and evaluation of digital content. Students develop critical-thinking, problem-solving, and decision-making skills by collecting, analyzing, and reporting digital information. Students practice digital citizenship by behaving responsibly while using technology tools and resources.
Through the study of technology operations and concepts, students learn technology related terms, concepts, and data input strategies.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge and develop digital products. The student is expected to:

(A) apply prior knowledge to develop new ideas, products, and processes;
(B) create original products using a variety of resources;
(C) explore virtual environments, simulations, models, and programming languages to enhance learning;
(D) create and execute steps to accomplish a task; and
(E) evaluate and modify steps to accomplish a task.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally using digital tools and resources to reinforce and promote learning. The student is expected to:

(A) use communication tools that allow for anytime, anywhere access to interact, collaborate, or publish with peers locally and globally;
(B) participate in digital environments to develop cultural understanding by interacting with learners of multiple cultures;
(C) format digital information, including font attributes, color, white space, graphics, and animation, for a defined audience and communication medium; and
(D) select, store, and deliver products using a variety of media, formats, devices, and virtual environments.

(3) Research and information fluency. The student acquires and evaluates digital content. The student is expected to:

(A) use search strategies to access information to guide inquiry;
(B) use research skills to build a knowledge base regarding a topic, task, or assignment; and
(C) evaluate the usefulness of acquired digital content.

(4) Critical thinking, problem solving, and decision making. The student applies critical-thinking skills to solve problems, guide research, and evaluate projects using digital tools and resources. The student is expected to:

(A) identify what is known and unknown and what needs to be known regarding a problem and explain the steps to solve the problem;
(B) evaluate the appropriateness of a digital tool to achieve the desired product;
(C) evaluate products prior to final submission; and
(D) collect, analyze, and represent data using tools such as word processing, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using digital tools and resources. The student is expected to:

(A) adhere to acceptable use policies reflecting appropriate behavior in a digital environment;
(B) comply with acceptable digital safety rules, fair use guidelines, and copyright laws; and
(C) practice the responsible use of digital information regarding intellectual property, including software, text, images, audio, and video.

(6) Technology operations and concepts. The student demonstrates knowledge and appropriate use of technology systems, concepts, and operations. The student is expected to:

(A) use appropriate terminology regarding basic hardware, software applications, programs, networking, virtual environments, and emerging technologies;
(B) use appropriate digital tools and resources for storage, access, file management, collaboration, and designing solutions to problems;
(C) perform basic software application functions, including opening an application and creating, modifying, printing, and saving files;
(D) use a variety of input, output, and storage devices;
(E) use proper keyboarding techniques such as ergonomically correct hand and body positions appropriate for Kindergarten-Grade 2 learning;
(F) demonstrate keyboarding techniques for operating the alphabetic, numeric, punctuation, and symbol keys appropriate for Kindergarten-Grade 2 learning; and
(G) use the help feature online and in applications.

§126.7. Technology Applications, Grades 3-5, Beginning with School Year 2012-2013.

(a) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS−S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students use creative thinking and innovative processes to construct knowledge and develop products. Students communicate and collaborate both locally and globally to reinforce and promote learning. Research and information fluency includes the acquisition and evaluation of digital content. Students develop critical-thinking, problem-solving, and decision-making skills by collecting, analyzing, and reporting digital information. Students practice digital citizenship by behaving responsibly while using technology tools and resources. Through the study of technology operations and concepts, students learn technology related terms, concepts, and data input strategies.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.
(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge and develop digital products. The student is expected to:
   (A) create original products using a variety of resources;
   (B) analyze trends and forecast possibilities, developing steps for the creation of an innovative process or product; and
   (C) use virtual environments to explore systems and issues.
(2) Communication and collaboration. The student collaborates and communicates both locally and globally using digital tools and resources to reinforce and promote learning. The student is expected to:
   (A) draft, edit, and publish products in different media individually and collaboratively;
   (B) use font attributes, color, white space, and graphics to ensure that products are appropriate for multiple communication media, including monitor display, web, and print;
   (C) collaborate effectively through personal learning communities and social environments;
   (D) select and use appropriate collaboration tools;
   (E) evaluate the product for relevance to the assignment or task; and
   (F) perform basic software application functions, including opening applications and creating, modifying, printing, and saving files.
(3) Research and information fluency. The student acquires and evaluates digital content. The student is expected to:
   (A) use various search strategies such as keyword(s); the Boolean identifiers and, or, and not; and other strategies appropriate to specific search engines;
   (B) collect and organize information from a variety of formats, including text, audio, video, and graphics;
   (C) validate and evaluate the relevance and appropriateness of information; and
   (D) acquire information appropriate to specific tasks.
(4) Critical thinking, problem solving, and decision making. The student researches and evaluates projects using digital tools and resources. The student is expected to:
   (A) identify information regarding a problem and explain the steps toward the solution;
   (B) collect, analyze, and represent data to solve problems using tools such as word processing, databases, spreadsheets, graphic organizers, charts, multimedia, simulations, models, and programming languages;
   (C) evaluate student-created products through self and peer review for relevance to the assignment or task; and
   (D) evaluate technology tools applicable for solving problems.
(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using digital tools and resources. The student is expected to:
   (A) adhere to acceptable use policies reflecting positive social behavior in the digital environment;
   (B) respect the intellectual property of others;
   (C) abide by copyright law and the Fair Use Guidelines for Educational Multimedia;
   (D) protect and honor the individual privacy of oneself and others;
   (E) follow the rules of digital etiquette;
   (F) practice safe, legal, and responsible use of information and technology; and
   (G) comply with fair use guidelines and digital safety rules.
(6) Technology operations and concepts. The student demonstrates knowledge and appropriate use of technology systems, concepts, and operations. The student is expected to:
   (A) demonstrate an understanding of technology concepts, including terminology for the use of operating systems, network systems, virtual systems, and learning systems appropriate for Grades 3-5 learning;
   (B) manipulate files using appropriate naming conventions; file management, including folder structures and tagging; and file conversions;
   (C) navigate systems and applications accessing peripherals both locally and remotely;
   (D) troubleshoot minor technical problems with hardware and software using available resources such as online help and knowledge bases; and
   (E) use proper touch keyboarding techniques and ergonomic strategies such as correct hand and body positions and smooth and rhythmic keystrokes.

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 September 6, 2011.
TRD-201103645
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 26, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1497

SUBCHAPTER B. MIDDLE SCHOOL
19 TAC §§126.11, 126.13 - 126.16

The amendment and new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.
The amendment and new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

§126.14. Technology Applications, Grade 6, Beginning with School Year 2012-2013.

(a) General requirements. Districts have the flexibility of offering technology applications in a variety of settings. Districts are encouraged to offer technology applications in all content areas. This content may also be offered in a specific class while being integrated in all content areas.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications, students make informed decisions by understanding current and emerging technologies, including technology systems, appropriate digital tools, and personal learning networks. As competent researchers and responsible digital citizens, students use creative and computational thinking to solve problems while developing career and college readiness skills.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge, generate new ideas, and create products. The student is expected to:

(A) identify, create, and use files in various formats such as text, raster and vector graphics, video, and audio files;

(B) create original works as a means of personal or group expression;

(C) explore complex systems or issues using models, simulations, and new technologies to make predictions, modify input, and review results; and

(D) discuss trends and possible outcomes.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally to reinforce and promote learning. The student is expected to:

(A) participate in personal learning networks to collaborate with peers, experts, or others using digital tools such as blogs, wikis, audio/video communication, or other emerging technologies;

(B) communicate effectively with multiple audiences using a variety of media and formats; and

(C) read and discuss examples of technical writing.

(3) Research and information fluency. The student acquires, analyzes, and manages content from digital resources. The student is expected to:

(A) create a research plan to guide inquiry;

(B) discuss and use various search strategies, including keyword(s) and Boolean operators;

(C) select and evaluate various types of digital resources for accuracy and validity; and

(D) process data and communicate results.

(4) Critical thinking, problem solving, and decision making. The student makes informed decisions by applying critical-thinking and problem-solving skills. The student is expected to:

(A) identify and define relevant problems and significant questions for investigation;

(B) plan and manage activities to develop a solution, design a computer program, or complete a project;

(C) collect and analyze data to identify solutions and make informed decisions;

(D) use multiple processes and diverse perspectives to explore alternative solutions;

(E) make informed decisions and support reasoning; and

(F) transfer current knowledge to the learning of newly encountered technologies.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using technology tools and resources. The student is expected to:

(A) understand copyright principles, including current laws, fair use guidelines, creative commons, open source, and public domain;

(B) practice ethical acquisition of information and standard methods for citing sources;

(C) practice safe and appropriate online behavior, personal security guidelines, digital identity, digital etiquette, and acceptable use of technology; and

(D) understand the negative impact of inappropriate technology use, including online bullying and harassment, hacking, intentional virus setting, invasion of privacy, and piracy such as software, music, video, and other media.

(6) Technology operations and concepts. The student demonstrates a thorough understanding of technology concepts, systems, and operations. The student is expected to:

(A) define and use current technology terminology appropriately;

(B) select technology tools based on licensing, application, and support;

(C) identify, understand, and use operating systems;

(D) understand and use software applications, including selecting and using software for a defined task;

(E) identify, understand, and use hardware systems;

(F) understand troubleshooting techniques such as restarting systems, checking power issues, resolving software compatibility, verifying network connectivity, connecting to remote resources, and modifying display properties;

(G) demonstrate effective file management strategies such as file naming conventions, location, backup, hierarchy, folder structure, file conversion, tags, labels, and emerging digital organizational strategies;

(H) discuss how changes in technology throughout history have impacted various areas of study;

ADOPTED RULES   September 23, 2011   36 TexReg 6287
(I) discuss the relevance of technology as it applies to college and career readiness, life-long learning, and daily living;

(J) use a variety of local and remote input sources;

(K) use keyboarding techniques and ergonomic strategies while building speed and accuracy;

(L) create and edit files with productivity tools, including:

(i) a word processing document using digital typography standards such as page layout, font formatting, paragraph formatting, and list attributes;

(ii) a spreadsheet workbook using basic computational and graphic components such as basic formulas and functions, data types, and chart generation;

(iii) a database by manipulating components such as entering and searching for relevant data; and

(iv) a digital publication using relevant publication standards;

(M) plan and create non-linear media projects using graphic design principles; and

(N) integrate two or more technology tools to create a new digital product.

§126.15 Technology Applications, Grade 7, Beginning with School Year 2012-2013.

(a) General requirements. Districts have the flexibility of offering technology applications in a variety of settings. Districts are encouraged to offer technology applications in all content areas. This content may also be offered in a specific class while being integrated in all content areas.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS-S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications, students make informed decisions by understanding current and emerging technologies, including technology systems, appropriate digital tools, and personal learning networks. As competent researchers and responsible digital citizens, students use creative and computational thinking to solve problems while developing career and college readiness skills.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge, generate new ideas, and create products. The student is expected to:

(A) identify, create, and use files in various formats such as text, raster and vector graphics, video, and audio files;

(B) create and present original works as a means of personal or group expression;

(C) explore complex systems or issues using models, simulations, and new technologies to make predictions, modify input, and review results; and

(D) discuss trends and make predictions.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally to reinforce and promote learning. The student is expected to:

(A) create personal learning networks to collaborate and publish with peers, experts, or others using digital tools such as blogs, wikis, audio/video communication, or other emerging technologies;

(B) communicate effectively with multiple audiences using a variety of media and formats; and

(C) create products using technical writing strategies.

(3) Research and information fluency. The student acquires, analyzes, and manages content from digital resources. The student is expected to:

(A) create a research plan to guide inquiry;

(B) use and evaluate various search strategies, including keyword(s) and Boolean operators;

(C) select and evaluate various types of digital resources for accuracy and validity; and

(D) process data and communicate results.

(4) Critical thinking, problem solving, and decision making. The student makes informed decisions by applying critical-thinking and problem-solving skills. The student is expected to:

(A) identify and define relevant problems and significant questions for investigation;

(B) plan and manage activities to develop a solution, design a computer program, or complete a project;

(C) collect and analyze data to identify solutions and make informed decisions;

(D) use multiple processes and diverse perspectives to explore alternative solutions;

(E) make informed decisions and support reasoning; and

(F) transfer current knowledge to the learning of newly encountered technologies.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using technology tools and resources. The student is expected to:

(A) understand and practice copyright principles, including current laws, fair use guidelines, creative commons, open source, and public domain;

(B) practice ethical acquisition of information and standard methods for citing sources;

(C) practice and explain safe and appropriate online behavior, personal security guidelines, digital identity, digital etiquette, and acceptable use of technology; and

(D) understand the negative impact of inappropriate technology use, including online bullying and harassment, hacking, intentional virus setting, invasion of privacy, and piracy such as software, music, video, and other media.
Technology operations and concepts. The student demonstrates a thorough understanding of technology concepts, systems, and operations. The student is expected to:

(A) define and use current technology terminology appropriately;
(B) select and apply technology tools based on licensing, application, and support;
(C) identify, understand, and use operating systems;
(D) understand and use software applications, including selecting and using software for a defined task;
(E) identify, understand, and use hardware systems;
(F) understand troubleshooting techniques such as restarting systems, checking power issues, resolving software compatibility, verifying network connectivity, connecting to remote resources, and modifying display properties;
(G) implement effective file management strategies such as file naming conventions, location, backup, hierarchy, folder structure, file conversion, tags, labels, and emerging digital organizational strategies;
(H) explain how changes in technology throughout history have impacted various areas of study;
(I) explain the relevance of technology as it applies to college and career readiness, life-long learning, and daily living;
(J) use a variety of local and remote input sources;
(K) use keyboarding techniques and ergonomic strategies while building speed and accuracy;
(L) create and edit files with productivity tools, including:
   (i) a word processing document using digital typography standards such as page layout, font formatting, paragraph formatting, and list attributes;
   (ii) a spreadsheet workbook using advanced computational and graphic components such as complex formulas, basic functions, data types, and chart generation;
   (iii) a database by manipulating components such as defining fields, entering data, and designing layouts appropriate for reporting; and
   (iv) a digital publication using relevant publication standards;
(M) plan and create non-linear media projects using graphic design principles; and
(N) integrate two or more technology tools to create a new digital product.

§126.16. Technology Applications, Grade 8, Beginning with School Year 2012-2013.

(a) General requirements. Districts have the flexibility of offering technology applications in a variety of settings. Districts are encouraged to offer technology applications in all content areas. This content may also be offered in a specific class while being integrated in all content areas.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications, students make informed decisions by understanding current and emerging technologies, including technology systems, appropriate digital tools, and personal learning networks. As competent researchers and responsible digital citizens, students use creative and computational thinking to solve problems while developing career and college readiness skills.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge, generate new ideas, and create products. The student is expected to:

   (A) identify, create, and use files in various formats, including text, raster and vector graphics, video, and audio files;
   (B) create, present, and publish original works as a means of personal or group expression;
   (C) explore complex systems or issues using models, simulations, and new technologies to develop hypotheses, modify input, and analyze results; and
   (D) analyze trends and forecast possibilities.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally to reinforce and promote learning. The student is expected to:

   (A) create and manage personal learning networks to collaborate and publish with peers, experts, or others using digital tools such as blogs, wikis, audio/video communication, or other emerging technologies;
   (B) communicate effectively with multiple audiences using a variety of media and formats; and
   (C) create and publish products using technical writing strategies.

(3) Research and information fluency. The student acquires, analyzes, and manages content from digital resources. The student is expected to:

   (A) create a research plan to guide inquiry;
   (B) plan, use, and evaluate various search strategies, including keyword(s) and Boolean operators;
   (C) select and evaluate various types of digital resources for accuracy and validity; and
   (D) process data and communicate results.

(4) Critical thinking, problem solving, and decision making. The student makes informed decisions by applying critical-thinking and problem-solving skills. The student is expected to:

   (A) identify and define relevant problems and significant questions for investigation;
   (B) plan and manage activities to develop a solution, design a computer program, or complete a project;
   (C) collect and analyze data to identify solutions and make informed decisions;
(D) use multiple processes and diverse perspectives to explore alternative solutions;
(E) make informed decisions and support reasoning; and
(F) transfer current knowledge to the learning of newly encountered technologies.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using technology tools and resources. The student is expected to:

(A) understand, explain, and practice copyright principles, including current laws, fair use guidelines, creative commons, open source, and public domain;
(B) practice and explain ethical acquisition of information and standard methods for citing sources;
(C) practice and explain safe and appropriate online behavior, personal security guidelines, digital identity, digital etiquette, and acceptable use of technology; and
(D) understand and explain the negative impact of inappropriate technology use, including online bullying and harassment, hacking, intentional virus setting, invasion of privacy, and piracy such as software, music, video, and other media.

(6) Technology operations and concepts. The student demonstrates a thorough understanding of technology concepts, systems, and operations. The student is expected to:

(A) define and use current technology terminology appropriately;
(B) evaluate and select technology tools based on licensing, application, and support;
(C) identify, understand, and use operating systems;
(D) understand and use software applications, including selecting and using software for a defined task;
(E) identify, understand, and use hardware systems;
(F) apply troubleshooting techniques, including restarting systems, checking power issues, resolving software compatibility, verifying network connectivity, connecting to remote resources, and modifying display properties;
(G) implement effective file management strategies such as file naming conventions, location, backup, hierarchy, folder structure, file conversion, tags, labels, and emerging digital organizational strategies;
(H) evaluate how changes in technology throughout history have impacted various areas of study;
(I) evaluate the relevance of technology as it applies to college and career readiness, life-long learning, and daily living;
(J) use a variety of local and remote input sources;
(K) use keyboarding techniques and ergonomic strategies while building speed and accuracy;
(L) create and edit files with productivity tools, including:

(i) a word processing document using digital typography standards such as page layout, font formatting, paragraph formatting, mail merge, and list attributes;
(ii) a spreadsheet workbook using advanced computational and graphic components such as complex formulas, advanced functions, data types, and chart generation;
(iii) a database by manipulating components, including defining fields, entering data, and designing layouts appropriate for reporting; and
(iv) a digital publication using relevant publication standards and graphic design principles;
(M) plan and create non-linear media projects using graphic design principles; and
(N) integrate two or more technology tools to create a new digital product.

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 September 6, 2011.
TRD-201103646
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 26, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1497

SUBCHAPTER C. HIGH SCHOOL

19 TAC §§126.21, 126.31 - 126.50

The amendment and new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.


§126.32. Fundamentals of Computer Science (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS®) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.
(2) Fundamentals of Computer Science is intended as a first course for those students just beginning the study of computer science. Students will learn about the computing tools that are used every day. Students will foster their creativity and innovation through opportunities to design, implement, and present solutions to real-world problems. Students will collaborate and use computer science concepts to access, analyze, and evaluate information needed to solve problems. Students will learn the problem-solving and reasoning skills that are the foundation of computer science. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations and concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) investigate and explore various career opportunities within the computer science field and report findings through various media;
(B) create and publish interactive stories, games, and animations;
(C) create and publish interactive animations;
(D) create algorithms for the solution of various problems;
(E) create web pages using a mark-up language;
(F) use the Internet to create and publish solutions; and
(G) design creative and effective user interfaces.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) seek and respond to advice from peers and professionals in evaluating problem solutions;
(B) debug and solve problems using reference materials and effective strategies; and
(C) publish information in a variety of ways such as print, monitor display, web pages, and video.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) construct appropriate electronic search strategies; and
(B) use a variety of resources, including other subject areas, together with various productivity tools to gather authentic data as a basis for individual and group programming projects.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate the ability to insert applets into web pages;
(B) find, download, and insert scripting code into web pages to enhance interactivity;
(C) understand binary representation of data in computer systems, perform conversions between decimal and binary numbers, and count in binary number systems;
(D) read and define a problem’s description, purpose, and goals;
(E) demonstrate coding proficiency in a contemporary programming language by developing solutions that create stories, games, and animations;
(F) choose, identify, and use the appropriate data type to properly represent data in a problem solution;
(G) demonstrate an understanding of and use variables within a programmed story, game, or animation;
(H) demonstrate proficiency in the use of arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;
(I) demonstrate an understanding of and use sequence within a programmed story, game, or animation;
(J) demonstrate an understanding of and use conditional statements within a programmed story, game, or animation;
(K) demonstrate an understanding of and use iteration within a programmed story, game, or animation;
(L) create an interactive story, game, or animation;
(M) use random numbers within a programmed story, game, or animation; and
(N) test program solutions by investigating valid and invalid data.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss copyright laws/issues and model ethical acquisition of digital information by citing sources using established methods;
(B) demonstrate safe digital etiquette and knowledge of acceptable use policies when using networks, especially resources on the Internet and on intranets;
(C) investigate measures such as passwords or virus detection/prevention to protect computer systems and databases from unauthorized use and tampering;
(D) understand the safety risks associated with the use of social networking sites;
(E) discuss the impact of computing and computing related advancements on society; and
(F) determine the reliability of information available through electronic media.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) demonstrate knowledge of the basic computer components, including a central processing unit (CPU), storage, and input/output devices.
(B) use operating system tools, including appropriate file management;

(C) demonstrate knowledge and appropriate use of different operating systems;

(D) demonstrate knowledge and understanding of basic network connectivity;

(E) describe, compare, and contrast the differences between an application and an operating system; and

(F) compare, contrast, and appropriately use various input, processing, output, and primary/secondary storage devices.

§126.35. **Computer Science III (One Credit), Beginning with School Year 2012-2013.**

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The required prerequisite for this course is Computer Science II, Advanced Placement (AP) Computer Science A, or International Baccalaureate (IB) Computer Science. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS-S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Computer Science III will foster students’ creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of advanced computer science data structures through the study of technology operations, systems, and concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) apply data abstraction and encapsulation to manage complexity;

(B) implement a student-created class hierarchy;

(C) read and write class specifications using visual organizers, including Unified Modeling Language;

(D) use black box programming methodology;

(E) design, create, and use interfaces to apply protocols;

(F) identify, describe, design, create, evaluate, and compare standard sorting algorithms that perform sorting operations on data structures, including quick sort and heap sort;

(G) select, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution; and

(H) manage complexity by using a systems approach.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use local area networks (LANs) and wide area networks (WANs), including the Internet and intranets, in research, file management, and collaboration;

(B) create interactive human interfaces to acquire data from a user and display program results using an advanced Graphical User Interface (GUI);

(C) write programs and communicate with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, indentation, and a standardized program style; and

(D) work in software design teams.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) identify and use the structured data type of arrays of objects to traverse, search, modify, insert, and delete data;

(B) identify and use two-dimensional ragged arrays to traverse, search, modify, insert, and delete data;

(C) identify and use a list object data structure, including vector, to traverse, search, insert, and delete object data;

(D) understand and trace a linked-list data structure;

(E) create program solutions using a linked-list data structure, including unordered single, ordered single, double, and circular linked;

(F) understand composite data structures, including a linked list of linked lists;

(G) understand and create program solutions using stacks, queues, trees, heaps, priority queues, graph theory, and enumerated data types;

(H) understand and create program solutions using sets, including HashSet and TreeSet;

(I) understand and create program solutions using maps, including HashMap and TreeMap; and

(J) write and modify text file data.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop choice algorithms using selection control statements, including break, label, and continue;

(B) demonstrate proficiency in the use of the bitwise operators;

(C) develop iterative algorithms using do-while loops;

(D) demonstrate proficiency in the use of the ternary operator;
(E) create program solutions that use iterators;
(F) identify, trace, and appropriately use recursion;
(G) understand and create program solutions using hashing;
(H) perform pattern recognition using regular expressions;
(I) explore common algorithms, including matrix addition and multiplication, fractals, Towers of Hanoi, and magic square;
(J) create program solutions that exhibit robust behavior by understanding and avoiding runtime errors and handling anticipated errors;
(K) understand object-oriented design concepts of inner classes, outer classes, and anonymous classes;
(L) use object reference scope identifiers, including null, this, and super;
(M) provide object functionality to primitive data types;
(N) write program assumptions in the form of assertions;
(O) write a Boolean expression to test a program assertion; and
(P) construct assertions to make explicit program invariants.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information;
(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast high-level programming languages;
(B) create a small workgroup network;
(C) create and apply a basic network addressing scheme; and
(D) create discovery programs in a low-level language, high-level language, and scripting language.

§126.37. Discrete Mathematics (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The required prerequisite for this course is Algebra II. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS®S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Discrete Mathematics provides the tools used in most areas of computer science. Exposure to the mathematical concepts and discrete structures presented in this course is essential in order to provide an adequate foundation for further study. Discrete Mathematics is generally listed as a core requirement for Computer Science majors. Course topics are divided into six areas: sets, functions, and relations; basic logic; proof techniques; counting basics; graphs and trees; and discrete probability. Mathematical topics are interwoven with computer science applications to enhance the students' understanding of the introduced mathematics. Students will develop the ability to see computational problems from a mathematical perspective. Introduced to a formal system (propositional and predicate logic) upon which mathematical reasoning is based, students will acquire the necessary knowledge to read and construct mathematical arguments (proofs), understand mathematical statements (theorems), and use mathematical problem-solving tools and strategies. Students will be introduced to discrete data structures such as sets, discrete functions, and relations and graphs and trees. Students will also be introduced to discrete probability and expectations.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) model algorithms and real-world situations using formal tools of symbolic logic;
(B) model computer science problems by using graphs and trees; and
(C) calculate the probabilities of events and expectations of random variables for such problems as games of chance.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) convert spoken language statements to appropriate statements in propositional logic;
(B) explain basic terminology of sets, functions, and relations;
(C) state the definition of the Master theorem;
(D) use the context of a particular application to interpret the meaning derived when computing the permutations and combinations of a set;
(E) interpret associated operations and terminology in context; and
(F) define and provide examples of logical equivalence, normal forms, validity, and modus ponens/modus tollens.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) construct truth tables for negation, conjunction, disjunction, implication, biconditional, and bit operators; and
(B) use truth tables to demonstrate propositional relations.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:
(A) analyze practical examples using appropriate models of sets, functions, and relations;

(B) compare and contrast tautology, contradiction, and contingency as related to propositional equivalences;

(C) compare and contrast examples and use of counterexamples, contrapositions, and contradictions;

(D) describe the appropriate use and limitations of predicate logic;

(E) apply formal methods of symbolic propositional and predicate logic;

(F) use formal logic proofs and logical reasoning to solve problems;

(G) outline the basic structure of proofs, including direct, indirect, contradiction, induction, existence, and constructive proofs;

(H) compare and contrast the types of problems best satisfied by direct, indirect, contradiction, induction, existence, and constructive proofs;

(I) relate mathematical induction to recursion and recursively defined structures;

(J) compare and contrast weak, strong, and structural induction, including when each is most appropriately used and examples of each;

(K) compare and contrast dependent and independent events;

(L) use recurrence equations to analyze algorithms and other practical problems;

(M) use counting techniques to analyze algorithms and other practical problems;

(N) apply probability tools to solve problems; and

(O) define, compare, and contrast simple graphs, multigraphs, and directed and undirected graphs using definitions, properties, and examples, including special cases.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information;

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies; and

(C) investigate how the concepts of discrete mathematics are related to relevant problems and significant questions.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) perform operations associated with sets, functions, and relations;

(B) apply basic counting principles, including cardinality and the pigeonhole principle;

(C) apply appropriate precedence when using logical operators;

(D) use appropriate strategies, including De Morgan’s Laws, to identify propositional equivalences;

(E) identify and appropriately use predicates, existential and universal quantifiers, and valid arguments;

(F) identify possible applications of proofs, including evaluating algorithmic complexity;

(G) state and appropriately use the product and sum rules;

(H) compute permutations and combinations of a set;

(I) solve a variety of basic recurrence equations;

(J) apply the binomial theorem to independent events;

(K) apply Bayes’ theorem to dependent events;

(L) demonstrate transversal methods for trees and graphs; and

(M) relate graphs and trees to data structures, algorithms, and counting.

§126.44. Digital Communications in the 21st Century (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS™) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students will support and manage the work of individuals and groups to create products to inform and promote their proposed solutions using appropriate communication skills and methods of delivery. Students will learn to make informed decisions using digital tools and appropriate applications. By using online research and information resources such as journals, newspapers, or authoritative databases, students will synthesize knowledge; create solutions; and evaluate the results for authentic, real-world local, state, national, and global issues.

(3) Digital Communications in the 21st Century will prepare students for the societal demands of increased civic literacy, independent working environments, global awareness, and the mastery of a base set of analysis and communication skills. Students will be expected to design and present an effective product based on well-researched issues in order to thoughtfully propose suggested solutions to authoritative stakeholders. The outcome of the process and product approach is to provide students an authentic platform to demonstrate effective application of multimedia tools within the contexts of global communication and collaborative communities and appropriately share their voices to affect change that concerns their future.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates the ability to analyze, evaluate, and adapt during the creative problem-solving process and demonstrates creative thinking in developing
solutions to real-world issues using digital tools. The student is expected to:

(A) generate innovative, sustainable solutions for real-world issues such as global warming, immigration, or the global economy using emerging digital tools;

(B) gather and evaluate accurate information for feasibility and practicality as a basis for making communication decisions; and

(C) analyze the ethical and social responsibilities as a project team when communicating with peers, stakeholders, and experts.

(2) Creativity and innovation. The student uses innovative thinking to develop new ideas and processes for solving real-world issues and conveying those ideas to a global audience through a persuasive digital product. The student is expected to:

(A) examine real-world issues relating to current topics such as health care, government, business, or aerospace;

(B) develop innovative solutions to address issues;

(C) create unique methods and products conveying solutions to audiences beyond the classroom such as school officials, nonprofit organizations, higher education officials, government, or other stakeholders;

(D) demonstrate the effective use and importance of verbal and nonverbal communication skills when presenting ideas and solutions to diverse audiences; and

(E) use appropriate techniques to manage communication apprehension, build self-confidence, and gain command of information.

(3) Communication and collaboration. The student develops a process to effectively communicate with peers, experts, and other audiences about current issues and solutions to global problems. The student is expected to:

(A) demonstrate innovative uses of a wide range of emerging technologies, including online learning, mobile devices, digital content, and Web 2.0 tools such as podcasting, wikis, and blogs;

(B) participate within appropriate electronic communities as a learner, initiator, and contributor;

(C) extend the learning environment beyond the school walls using appropriate digital tools;

(D) collaborate with a variety of field experts;

(E) prepare for, organize, and participate in an informative or persuasive group discussion with an audience; and

(F) participate appropriately in conversations by making clear requests, giving accurate directions, and asking purposeful questions.

(4) Communication and collaboration. The student uses digital tools to facilitate collaboration and communication in the design, development, and evaluation of products offering solutions to real-world issues. The student is expected to:

(A) design and organize resources to create an effective collaborative working environment that enables a group to investigate a local, state, national, or global issue;

(B) analyze and evaluate effective communication;

(C) demonstrate leadership by managing project activities such as timelines, research, product development, marketing material, and effective communication skills;

(D) demonstrate effective management of diverse peer-group dynamics such as solving problems, managing conflicts, and building consensus; and

(E) evaluate original products for accuracy, validity, and compliance with copyright laws.

(5) Research and information fluency. The student uses a variety of strategies to acquire and evaluate information relating to real-world issues. The student is expected to:

(A) locate authoritative information from primary and secondary sources such as field experts, online full-text databases, or current news databases;

(B) make decisions regarding the selection, acquisition, and use of information gathered, taking into consideration its quality, appropriateness, effectiveness, and level of interest to society; and

(C) demonstrate fluency in the use of a variety of electronic sources such as cloud computing, emerging collaboration technologies, data mining strategies, and mobile or other technologies.

(6) Research and information fluency. The student uses a variety of digital tools to synthesize information related to real-world issues in student-created materials. The student is expected to:

(A) construct real-world informational materials that inform, persuade, or recommend reform of selected issues;

(B) identify and employ a method to evaluate the design, functionality, and accuracy of the student-created materials; and

(C) use effective strategies to organize and outline presentations to support and clarify points.

(7) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to conduct research, manage products, solve problems, and make informed decisions for real-world local, state, national, and global issues. The student is expected to:

(A) identify and define authentic problems and significant questions for investigation;

(B) design and implement procedures to track trends, set timelines, and review and evaluate progress for project completion;

(C) read and use technical documentation, including appropriate help options, to complete tasks; and

(D) analyze the audience, occasion, and purpose when designing presentations.

(8) Critical thinking, problem solving, and decision making. The student creates a product presenting solutions for real-world local, state, national, and global issues. The student is expected to:

(A) create technology specifications for tasks and rubrics to evaluate products and product quality against established criteria;

(B) resolve information conflicts and validate information by comparing data;

(C) represent diverse perspectives in problem solutions; and

(D) prepare and use visual or auditory aids such as scripts, notes, or digital applications to enhance presentations.
(9) Digital citizenship. The student examines ethical and legal behavior to demonstrate leadership as a digital citizen. The student is expected to:

(A) model safe and ethical use of digital information;
(B) model respect of intellectual property when manipulating, morphing, or editing graphics, video, text, and sound;
(C) use technology applications in a positive manner that supports productivity, collaboration, and continuing education; and
(D) use professional etiquette and protocol in situations such as making introductions, offering and receiving criticism, and communicating with digital tools.

(10) Digital citizenship. The student demonstrates ethical and legal behavior in the creation of student products. The student is expected to:

(A) use collaborative tools and strategies; and
(B) use digital tools to correctly document sources such as in bibliographies or works cited.

(11) Technology operations and concepts. The student makes decisions regarding the selection, acquisition, and use of digital tools in a multimedia classroom/lab, taking into consideration the quality, appropriateness, effectiveness, and efficiency of the tools. The student is expected to:

(A) determine the most appropriate file type based on universally recognized file formats such as portable document format (PDF), text format (TXT), rich text format (RTF), and Joint Photographic Experts Group format (JPEG);
(B) use compression schemes for photo, animation, video, and graphics; and
(C) distinguish among appropriate color, sound, and design principles such as consistency, repetition, alignment, proximity, and ratio of text to white space.

(12) Technology operations and concepts. The student demonstrates knowledge through various cloud and network technologies such as web-based interactive presentations, document sharing, and online scholarly databases. The student is expected to:

(A) use necessary vocabulary related to digital tools;
(B) retrieve and discriminate between authoritative and non-authoritative data sources; and
(C) adopt, adapt, and transfer prior knowledge to multiple situations when retrieving, manipulating, and creating original digital projects.

§126.46. Web Communications (One-Half Credit). Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course is recommended for students in Grade 9.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts. This is an exploratory course in web communications.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) demonstrate proficiency in the use of local and online collaboration;
(B) create websites using web editors or web authoring programs;
(C) evaluate the accessibility and usability of original websites; and
(D) conceptualize possible technologies based on current technical trends.

(2) Communication and collaboration. The student uses digital technology to work collaboratively toward his or her own learning and the learning of others. The student is expected to:

(A) analyze and implement the proper and acceptable use of digital/virtual communications technologies such as instant messaging (IM), chat, email, and social networking;
(B) define and implement the acquisition, sharing, and use of files taking into consideration primary ownership and copyright;
(C) apply decisions regarding the selection, acquisition, and sharing of uniform resource locators (URLs) used in research, taking into consideration their quality, appropriateness, and effectiveness; and
(D) solve problems using critical-thinking strategies.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

(A) verify the accuracy, validity, and currency of acquired information;
(B) conduct effective searches using Boolean operators;
(C) acquire and use appropriate vocabulary terms;
(D) cite sources appropriately using established methods;
(E) model ethical and legal acquisition of digital information following guidelines in the student code of conduct, including plagiarism and copyright laws;
(F) identify and discuss emerging technologies and their impact;
(G) understand Internet history and structure and how they impact current use; and
(H) demonstrate appropriate use of grammar, spelling, and vocabulary when creating original work.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions
using appropriate digital tools and resources. The student is expected to:

1. Demonstrate the transfer and adaptation of knowledge through the creation of original work.
2. Evaluate and implement security measures such as firewalls and Hypertext Transfer Protocol Secure (HTTPS) to protect original work.
3. Analyze and follow timelines needed to create, edit, and present original work.
4. Verify current licensing issues for software being used for the creation of original work.
5. Identify and evaluate the design and functionality of web pages using rubrics.
6. Optimize web information for fast download such as dial-up and high speed Internet and mobile devices.
7. Evaluate original work through self-, peer, and professional review of websites.

5. Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

1. Engage in online activities that follow appropriate behavioral, communication, and privacy guidelines, including ethics, personal security, and verbiage determined by the intended audience.
2. Understand the negative impact of inappropriate technology use, including online bullying and harassment.
3. Implement online security guidelines, including identity protection, limited personal information sharing, and password protection of a secure website.
4. Advocate and practice safe, legal, and responsible use of information and technology.

6. Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

1. Demonstrate knowledge of hardware such as scanners, cameras, printers, video cameras, and external hard drives.
2. Identify the parts of a computer and explain their functions.
3. Summarize the need, functionality, and use of servers.
4. Identify the advantages and disadvantages of running a personal web server versus using a web server provider.
5. Distinguish and appropriately use various input, processing, output, and primary/secondary storage devices.
6. Create and implement universally accessible documents.
7. Analyze bandwidth issues as they relate to audience, servers, connectivity, and cost.
8. Establish a folder/directory hierarchy for storage of a web page and its related or linked files.
9. Follow file and folder naming conventions, including spacing, special characters, and capitalization.
10. Identify basic design principles when creating a website.

§126.48. Web Game Development (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The recommended prerequisite for this course is Web Design. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

1. The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS-S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

2. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

1. Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

   (A) Research, evaluate, and demonstrate appropriate design of a web-based gaming site;
   (B) Illustrate ideas for web artwork from direct observations, experiences, and imagination;
   (C) Create original designs for web applications;
   (D) Demonstrate the effective use of art media to create original web designs.

2. Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

   (A) Understand and evaluate the use and appropriateness of webinars;
   (B) Examine, discuss, and summarize interactive online learning environments;
   (C) Distinguish between distance learning, virtual learning, and online learning;
   (D) Define and evaluate Voice over Internet Protocol (VoIP);
   (E) Identify and apply end-user, peer, self-, and professional evaluations; and
   (F) Work collaboratively to create functioning programs and gaming products.

3. Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

   (A) Research, evaluate, and create web forms for database processing;
   (B) Identify the various programming languages and differentiate among the available web programming languages;
   (C) Research, evaluate, and summarize content management systems (CMS);
(D) differentiate between Common Gateway Interface (CGI) and computer-generated imagery (CGI);

(E) discuss, analyze, and summarize streaming media/content and game broadcasting;

(F) define and evaluate instant messaging (IM) within a game environment;

(G) analyze and discuss the history of gaming;

(H) discuss, analyze, compare, and contrast game types such as action, action-adventure, adventure, construction and management simulation, life simulation, massively multiplayer online role-playing (MMORPG), music, party, puzzle, role-playing, sports, strategy, trivia, and vehicle simulation;

(I) discuss, analyze, compare, and contrast gaming hardware, including console, personal computer, mobile, and web;

(J) compare and contrast web standards versus browser-specific languages;

(K) research, evaluate, and summarize e-commerce;

(L) investigate career opportunities in programming, gaming, art, design, business, and marketing;

(M) research the characteristics of existing gaming websites to determine local, state, national, and global trends;

(N) compare and contrast historical and contemporary styles of art as applied to website development;

(O) compare and contrast the use of the art elements of color, texture, form, line, space, and value and the art principles of emphasis, pattern, rhythm, balance, proportion, and unity in personal web game artwork and the web game artwork of others, using vocabulary accurately;

(P) describe general characteristics in artwork from a variety of cultures that influence web game design;

(Q) research and evaluate emerging technologies; and

(R) research and evaluate augmented reality (the supplementing of reality with computer-generated imagery) such as heads-up display and virtual digital projectors.

4 Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) select an appropriate web programming language based on given criteria;

(B) develop requirements for a database and determine the appropriate means to insert, delete, and modify records;

(C) develop Structured Query Language (SQL) statements to retrieve, insert, modify, and delete records in a database;

(D) design and create a flow diagram to plan a database, program, and game;

(E) define and identify proper use of gaming graphics, including skins, textures, environment appearance, environment mapping, raster graphics, and vector graphics;

(F) plan an animation that includes the movement of characters, camera movements, camera angles, user point of view, mechanics of motion, backgrounds, settings, ambient objects, and environments;

(G) compare and contrast two-dimensional (2-D) and three-dimensional (3-D) animation;

(H) develop and create a gaming storyboard and script that shows the overall development of a storyline;

(I) identify and implement graphic and game design elements, including color, environment, time to completion, difficulty, story complexity, character development, device control, backstory, delivery, and online player(s);

(J) design and create decision trees for a game’s artificial intelligence engine;

(K) compare and contrast available audio formats for optimal delivery;

(L) identify the similarities and differences among platforms, including the application of coding on a personal computer, mobile device, and gaming console;

(M) research and identify existing online game development tools;

(N) evaluate and determine network requirements for the delivery of online games to end users; and

(O) create visual solutions by elaborating on direct observation, experiences, and imagination as they apply to original web design.

5 Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) explain game ratings and why games fit into certain ratings;

(B) assess games and game ratings in terms of their impact on societal interactions;

(C) model the ethical and legal acquisition of digital information following copyright laws, fair-use guidelines, and the student code of conduct;

(D) define and practice the ethical and legal acquisition, sharing, and use of files taking into consideration their primary ownership and copyright;

(E) examine original web game artwork to comply with appropriate behavioral, communication, and privacy guidelines, including ethics, online bullying and harassment, personal security, appropriate audience language, ethical use of files/file sharing, technical documentation, and online communities;

(F) interpret, evaluate, and justify artistic decisions in the creation of original art for web game design; and

(G) analyze original web game artwork and digital portfolios created by peers and others to form precise conclusions about formal qualities, historical and cultural contexts, intents, and meanings.

6 Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) create a website that includes:

(i) an interactive database with elements such as SQL statements, Extensible Markup Language (XML), and Open Database Connectivity (ODBC);

(ii) javascript; and
(iii) server-side processing, including Common Gateway Interface (CGI); bitmap and vector graphics; database creation, modification, and deletion; creation and maintenance of user accounts; user authentication; and documentation;

(B) create a fully functional online game that includes:
  (i) multiple game levels with increasing difficulty;
  (ii) high-score ranking;
  (iii) physics, including center of mass, collision detection, lighting, shading, perspective, anatomy, motion blur, lens flare, and reflections;
  (iv) art principles, including color theory, texture, balance, lighting, shading, skinning, and drawing;
  (v) graphics resolution, including pixel depth and compression;
  (vi) database creation, modification, and deletion;
  (vii) creation and maintenance of user accounts;
  (viii) authentication;
  (ix) artificial intelligence;
  (x) game-level saving;
  (xi) mathematical functions;
  (xii) varying camera angles;
  (xiii) VoIP for online web games; and
  (xiv) documentation; and
(C) create a digital portfolio.

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 September 6, 2011.
TRD-201103647
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 26, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1497

SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

19 TAC §§126.61 - 126.64

The new sections implement the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.


§126.62. Advanced Placement (AP) Computer Science A (One to Two Credits), Beginning with School Year 2012-2013.
(a) General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II, or a student should be comfortable with functions and the concepts found in the uses of functional notation such as f(x) = x + 2 and f(x) = g(h(x)).

(b) Content requirements. Content requirements for Advanced Placement (AP) Computer Science A are prescribed in the College Board Publication Advanced Placement Course Description: Computer Science A, published by The College Board.

§126.63. International Baccalaureate (IB) Computer Science, Standard Level (One to Two Credits), Beginning with School Year 2012-2013.
(a) General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for International Baccalaureate (IB) Computer Science, Standard Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§126.64. International Baccalaureate (IB) Computer Science, Higher Level (One to Two Credits), Beginning with School Year 2012-2013.
(a) General requirements. Students shall be awarded one to two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for International Baccalaureate (IB) Computer Science, Higher Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

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 September 6, 2011.
TRD-201103648
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 26, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE
The Texas State Board of Examiners of Psychologists adopts amendments to §465.1, Definitions, with changes to the proposed text published in the May 20, 2011, issue of the Texas Register (36 TexReg 3169) and will be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments being adopted clarify the rule by ensuring that legal procedures within the definition include federal and private disability benefits determinations, fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.

General comments were received regarding the adoption of the amendments.

Comment
This individual agrees with the proposed changes noting that they are in line with the new Specialty Guidelines for Forensic Psychology and that they clarify examinee rights to records under HIAAPA in the forensic settings added by the rule.

Response
The Board appreciates the support for the proposed revisions to the rule.

Comment
This individual, a licensed psychologist, states that Board rule §465.1(3) should further clarify that a forensic evaluation can be requested by an individual or client/patient, because referrals are received by the psychologist when the clients are involved in legal or disability cases and want the evaluations to use in the proceedings.

Response
The Board believes that the current language of this rule clearly indicates that any individual can request an evaluation of a forensic nature. Therefore, the Board declines to further amend the rule in this regard.

Comment
This individual states that the categories specified in Board rules §465.1 and §465.18 are generally recognized as forensic in nature because these administrative bodies are included in the latest revision of forensic specialty guidelines. Application of the guidelines does not depend on the practitioner’s typical areas of practice or expertise, but rather on the service provided in the case at hand. These guidelines apply in all matters in which practitioners provide forensic psychological expertise to judicial, administrative, and educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, administrative proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research in connection with, or in the anticipation of, litigation; or involvement in educational activities of a forensic nature. Also, in forensic evaluations since the examinee is not a patient/client, there should be no attempt to draw conclusions specifically in that person’s best interest.

Response
The Board feels that this additional information is helpful in the Board’s decision to finally adopt the amendments to this rule.

Comment
This individual suggests a further clarification in Board rule §465.1(3) in order that forensic services would be identified to include not only administrative bodies that are federal benefits providers but also private disability benefit providers.

Response
The Board believes this further clarification is appropriate and has included this additional text in its adoption of this rule.

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

§465.1. Definitions.

The following terms have the following meanings:

(1) "Client" has the same meaning as "patient."

(2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.

(3) "Forensic psychology" is the provision of psychological services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. A person who is the subject of forensic evaluation is not considered to be a patient under these rules. "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question. Additionally, forensic services would include fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.

(4) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.
(5) “Licensee” means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

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

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

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

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

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

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

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

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

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

This agency hereby certifies that the 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 September 8, 2011.
TRD-201103686

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 28, 2011
Proposal publication date: May 20, 2011
For further information, please call: (512) 305-7706

22 TAC §465.18

The Texas State Board of Examiners of Psychologists adopts amendments to §465.18, Forensic Services, without changes to the proposed text published in the May 20, 2011, issue of the Texas Register (36 TexReg 3170) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments being adopted clarify the rule by ensuring that forensic service include fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees.

General comments were received regarding the adoption of the amendments.

Comment
This individual agrees with the proposed changes noting that they are in line with the new Specialty Guidelines for Forensic Psychology and that they clarify examinee rights to records under HIAAPA in the forensic settings added by the rule.

Response
The Board appreciates the support for the proposed revisions to the rule.

Comment
This individual suggests that Board rule §465.18 should specifically indicate “neuropsychological” evaluations.

Response
The rule refers to psychological evaluations and these would include neuropsychological evaluations, and therefore the Board declines to specifically name neuropsychological evaluations in the rule.

Comment
This individual requests that psychological evaluations for Child Protective Services be specifically named as being included in Board rule §465.18, but that this type of evaluation is different than an evaluation for divorce or custody.

Response
The rule cannot list all the types of legal proceedings that are considered forensic services, and therefore the Board declines to add that specific type of evaluation.

Comment
This individual requests that clarification should be made to Board rule §465.18 regarding “HIPAA vs. forensic evaluations.”

Response
The Board does not agree that HIPAA is in conflict with the forensic rule. Also, Board rule §461.14 states that in the event there
is a conflict among state and federal statutes and Board rules, state or federal statutes control.

Comment

This individual states that despite obtaining signed statements from parents in divorce situations indicating that the psychologist will not provide forensic evaluations, nevertheless the psychologist can be subpoenaed to provide records or summaries of treatment. In such instances, the licensed psychologist should not be held to the standard in Board rule §465.18 which says "could have known or should have known."

Response

The Board states that because this rule already includes "divorce," licensed psychologists should realize that when psychological services include services to persons who are divorcing, the potential is high that forensic services will be incurred especially if children are involved. The Board declines to amend the rule to make an exception in such a situation.

Comment

This individual suggests additional language for the rule that would set training standards in forensic psychology, distinguish between court ordered counseling and court-ordered evaluation, and exempt from the standards set by this rule psychologists who provide treatment but are called to court to testify.

Response

The Board has no influence over the various justice systems. However, it has the duty to set standards for the practice of psychology that protect the public. Therefore, the Board believes that it is imperative that this rule alert psychologists to the reality that any licensee can become involved in what the Board considers forensic psychology. With this knowledge, the licensee can then seek appropriate training before such involvement and obtain consultation and even legal counsel when necessary. The Board requires 12 hours of continuing education for annual renewal of licensure, but it allows each licensee to determine the areas of continuing education that would be most appropriate to their practice and specific training needs. Board rule §465.9 requires that a psychologist provide only those services for which the psychologist is competent. However, in the situation of being court-ordered or subpoenaed the psychologist has to comply, although as Board rule §465.18(b) indicates providing the limitations to testimony is very important. Also, please note any licensee can be called upon to provide forensic psychological services of various levels and types as indicated in Board rule §465.18, but that to use the title of "forensic psychologist," a licensee must meet the standards for specialty titles set by Board rule §465.6(d). The Board declines to further amend the rule as suggested.

Comment

This individual states that the categories specified in Board rules §465.1 and §465.18 are generally recognized as forensic in nature because these administrative bodies are included in the latest revision of forensic specialty guidelines. Application of the guidelines does not depend on the practitioner’s typical areas of practice or expertise, but rather on the service provided in the case at hand. These guidelines apply in all matters in which practitioners provide forensic psychological expertise to judicial, administrative, and educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, administrative proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research in connection with, or in the anticipation of, litigation; or involvement in educational activities of a forensic nature. Also, in forensic evaluations since the examinee is not a patient/client, there should be no attempt to draw conclusions specifically in that person’s best interest.

Response

The Board feels that this additional information is helpful in the Board’s decision to finally adopt the amendments to this rule.

Comment

This individual states that in Board rule §465.18(a)(1) by adding "disability claim" to the text the rule is expanded to encompass situations where the services may initially take place in a clinic context and fall within the definition of patient or client, but then a legal or administrative proceeding arises later on. The individual indicates that this is not uncommon in workers’ compensation evaluations. The individual also indicates that if the situation changes in midstream the psychologist could inadvertently run afoul of the rule. The individual distinguishes between patients who are referred by their physicians for evaluation and treatment of psychological conditions who often should be considered clinical and those cases where the individuals are referred for evaluation by a third party due to administrative issues or disputes and therefore clearly should be considered forensic. The individual is concerned that the rule would prevent the psychologist from providing evaluation of what he considers to be a clinical case and then treatment for the same case.

Response

The Board believes that from the fact that many workers’ compensation evaluations, even those that are originally from physician referrals, do end up as disputes, psychologists should apply forensic standards starting with the evaluations. Also, the current text of the rule indicates that when seeking or receiving “court appointment” for a forensic evaluation, a licensee specifically avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case. The Board believes that this rule does not prevent a psychologist from both evaluating and treating a patient, unless the psychologist is first court appointed for evaluation or unless the case has clearly become a matter of dispute. Additionally, as current text of this Board rule requires, §465.18(a)(4) a licensee who provides forensic services must comply with all other applicable Board rules. Therefore, Board rule §465.11(b) would apply in that if there are changes in the nature of the services, this information is provided to the patient or recipient of services. Therefore, the Board declines to make further text changes to the rule.

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

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.
The agency received comments on proposed §19.32(a)(3) from Mr. Mark Wolfe, Executive Director, Texas Historical Commission. Mr. Wolfe recommended that terminology be added to the rule to give the State Energy Conservation Office more flexibility to protect significant historic buildings from modifications that may damage or destroy the building’s historic significance. Mr. Wolfe recommended that the rule exempt historical buildings using terminology from the 2009 International Energy Conservation Code, §101.4.2 on historic buildings.

The agency agrees with these comments and will adopt additional language to incorporate this suggestion.

These amendments are adopted pursuant to Government Code, §447.004.

These amendments implement Government Code, §447.004.


(a) The State Energy Conservation Office (SECO) adopts by reference the following standards for new construction or major renovation projects:

1. for any new construction or major renovation project, except low-rise residential buildings, with a design assignment made prior to September 1, 2011, the energy conservation design standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA), Energy Standard for Buildings, ASHRAE/IESNA Standard 90.1-1999;

2. for any new construction or major renovation project of a public low rise residential buildings with a design assignment made prior to June 1, 2011, the energy conservation design standard of the International Code Council as published in the International Energy Conservation Code for 2000;

3. for any new construction or major renovation project, except low-rise residential buildings, with a design assignment made on or after September 1, 2011, the energy conservation design standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA), Energy Standard for Buildings, ASHRAE/IESNA Standard 90.1-2010, provided however the following buildings or structures are exempt from compliance with this section:

   (A) a building or structure that is listed in the State or National Register of Historic Places;

   (B) a building or structure that is designated as a historic property under local or state designation law or survey;

   (C) a building or structure that is certified as a contributing resource with a National Register listed or locally designated historic district; or

   (D) with an opinion or certification by the State Historic Preservation Officer or Keeper of the National Register of Historic Places, a building or structure that is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district;

4. for any new construction or major renovation project of a low-rise residential building with a design assignment made on or after June 1, 2011, the residential chapter of the International Code Council as published in the International Energy Conservation Code for 2009.

(b) Effective September 1, 2011, SECO adopts by reference the "Water Efficiency Standards for State Buildings and Institutions of Higher Education Facilities" prepared by the Office of the Comptrol-
ler, State Energy Conservation Office dated January 2011 as the water conservation design standards for new state buildings and major renovation projects.

(c) Copies of the standards are published by the comptroller and are available at the offices of SECO, 111 E. 17th Street, LBJ State Office Building, Suite 1114, Austin, Texas 78774, where they may be viewed during normal office hours as well as on the comptroller’s website www.txbuildingenergycode.com.

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 September 8, 2011.
TRD-201103681
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 28, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 475-0387
◆ ◆ ◆
**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 Workforce Commission

**Title 40, Part 20**

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 809, Child Care Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201103750

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: September 13, 2011

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 823, Integrated Complaints, Hearings, and Appeals, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201103751

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: September 13, 2011

**Adopted Rule Reviews**

Texas Department of Insurance, Division of Workers’ Compensation

**Title 28, Part 2**

The Texas Department of Insurance, Division of Workers’ Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 47, Employee Notice of Injury or Death and Claim for Benefits. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as “the sections.”

The notice of proposed rule review was published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4422). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.
The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division’s review of Chapter 47; the chapter will be reviewed again in the future in accordance with Texas Government Code §2001.039.

TRD-201103742
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation
Filed: September 13, 2011

The Texas Department of Insurance, Division of Workers’ Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 51, Award of the Board. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the July 8, 2011, issue of the Texas Register (36 TexReg 4422). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division’s review of Chapter 51; the chapter will be reviewed again in the future in accordance with Texas Government Code §2001.039.

TRD-201103743
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation
Filed: September 13, 2011

36 TexReg 6306   September 23, 2011   Texas Register
Office of the Attorney General

Agreed Final Judgment

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health and Safety Codes. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of Chapter 7 of the Texas Water Code.

Case Title and Court: State of Texas v. Fort Worth Excavating, Cause No. D-1-GV-10-001178 in the 200th District, Travis County, Texas.

Background: This is a suit for enforcement of the Texas Solid Waste Disposal Act at a site operated by Fort Worth Excavating, Inc., in Fort Worth, Texas. The suit alleges that the defendant failed to comply with the Texas Solid Waste Disposal Act, administrative rules, and an administrative order.

Nature of Settlement: Proposed Agreed Final Judgment: The proposed Agreed Final Judgment settles all of the State’s claims in the suit. The Agreed Final Judgment contains provisions for injunctive relief, civil penalties, and attorney’s fees. The proposed judgment will resolve all existing claims by the State of Texas against Fort Worth Excavating, Inc. for alleged violations of the Texas Solid Waste Disposal Act, Chapter 361 of the Texas Health and Safety Code, and rules promulgated thereunder. The judgment awards the State attorney’s fees of $35,000; and civil penalties of $50,000.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201103693
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: September 9, 2011

Comptroller of Public Accounts

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of a contract with Linebarger Goggan Blair & Sampson, LLP, located at The Terrace II, 2700 Via Fortuna Drive, Suite 400, Austin, Texas 78746, awarded under Request for Proposals (RFP) No. 190b, for collection services.

The total contract amount is based on a contingent fee of 30% of all amounts collected by the contractor. The term of the contract was February 4, 2009 through August 31, 2011. The amendment extended the term of the contract through August 31, 2012.

The Notice of Request for Proposals was published in the August 29, 2008, issue of Texas Register (33 TexReg 7338). The Notice of Award was published in the February 20, 2009, issue of Texas Register (34 TexReg 1280).

TRD-201103734
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 12, 2011

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of a contract with McConnell & Jones LLC, 3040 Post Oak Boulevard, Suite 1600, Houston, Texas 77056, awarded under Request for Proposal (RFP) No. 191d for professional certified public accounting services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The total amount of the contract is not to exceed $193,238.00. The term of the contract was June 30, 2009 through August 31, 2011. The amendment extended the term of the contract through August 31, 2012.

The notice of request for proposals (RFP #191d) was published in the January 16, 2009, issue of the Texas Register (34 TexReg 351). The notice of award was published in the July 17, 2009, issue of the Texas Register (34 TexReg 4750).

TRD-201103739
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 13, 2011

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of the following professional unclaimed property audit services contracts awarded under Request for Proposals (RFP #198e):

Audit Services U.S., LLC., 212 West 35th Street, Suite 600, New York, New York 10001. The term of the contract was November 9, 2010 through August 31, 2011. The amendment extended the term of the contract through August 31, 2012.
Verus Financial, LLC, 500 Chase Parkway, Waterbury, Connecticut 06708. The term of the contract was November 9, 2010 through August 31, 2011. The amendment extended the term of the contract through August 31, 2012.

ACS State & Local Solutions, Inc., 100 Hancock Street, Tenth Floor, Quincy, Massachusetts 02171. The term of the contract was December 16, 2010 through August 31, 2011. The amendment extended the term of the contract through August 31, 2012.

The total amount of each contract is based on a percentage of the cash value of net unclaimed property received by Comptroller as a result of an audit.

The notice of request for proposals was published in the August 6, 2010, issue of the Texas Register (35 TexReg 6845). The notice of award was published in the January 7, 2011, issue of the Texas Register (36 TexReg 67).

TRD-201103748
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 13, 2011

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/19/11 - 09/25/11 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 09/19/11 - 09/25/11 is 18% for Commercial over $250,000.

1Credit for personal, family or household use.
2Credit for business, commercial, investment or other similar purpose.

TRD-201103737
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 12, 2011

Texas Education Agency

Public Notice Announcing the Availability of Waiver Request to U.S. Department of Education for School Improvement Grants Transformation Schools to Extend Timeline for Implementation of Evaluation Systems; Request for Related Public Comments

Purpose and Scope of the Waiver Request. Section I.A.2.(d)(1)(i)(B) of the final requirements for the School Improvement Grants (SIG) program requires a local educational agency (LEA) to develop and implement teacher and principal evaluation systems that meet certain requirements during the first year a school is implementing the transformation model. The evaluation systems are required to be rigorous, transparent, and equitable and to take into account data on student academic growth as a significant factor as well as other factors such as multiple observation-based assessments of performance, ongoing collections of information on professional practice reflective of student achievement, and increased high school graduation rates. This waiver would permit the Texas Education Agency (TEA), in accordance with criteria the TEA develops, to permit an LEA that is implementing the transformation model in one or more schools to take additional time to develop and implement high-quality evaluation systems that meet these requirements.

Specifically, the TEA plans to seek this waiver because the Texas Education Code (TEC), §21.352, requires that any locally-developed appraisal system be developed by both the campus- and district-level planning and decision-making committees established in the TEC, §11.251, and approved by the board of trustees, a process that takes considerable time to implement. In addition, the TEA is planning a revision of the commissioner-approved appraisal process that SIG campuses may wish to use to meet this requirement. The TEA believes that the additional time will enable qualifying LEAs to meet the SIG final requirements while encouraging the development and implementation of high-quality teacher and principal evaluation systems that will increase the quality of instruction for students and improve the academic achievement of students. The U.S. Department of Education (USDE) invited states to submit this type of waiver request, and the TEA, therefore, plans to submit a waiver to provide additional flexibility to cohort 1 and cohort 2 schools related to the timeline for implementing the required evaluation systems.

The proposed requested waiver will allow the TEA to modify implementation timelines as follows. A school that began implementing the transformation model during the 2010-2011 school year (cohort 1) and that was not able to complete the development and implementation of its evaluation systems during that year must develop them during the 2011-2012 school year and, at a minimum, pilot them for all teachers and principals no later than the 2012-2013 school year. The piloted systems should be capable of being used for decisions regarding, for example, retention, promotion, compensation, and rewards no later than the 2013-2014 school year. A school that begins implementing the transformation model in the 2011-2012 school year (cohort 2) must develop its evaluation systems during that year, pilot them for all teachers and principals during the 2012-2013 school year, and use the system in the school for decisions regarding, for example, retention, promotion, compensation, and rewards, no later than the 2013-2014 school year.

If granted a waiver of the implementation timeline for the evaluation system requirements of the transformation model, the TEA must make a number of assurances to the USDE. Additional information regarding the waiver request and required assurances is available on the TEA website at http://www.tea.state.tx.us/index4.aspx?id=7354&menu_id=798 under the section titled TTIPS News and Announcements.

Prior to submitting a waiver, the TEA is required to provide all LEAs in Texas with notice and a reasonable opportunity to comment on the request. Public comments related to this proposed waiver request must be submitted to the TEA no later than October 24, 2011. Comments may be submitted to the Department of Accreditation and School Improvement by mail at 1701 North Congress Avenue, Austin, Texas 78701; by fax at (512) 936-6474; or by email at NCLBTTIPS@tea.state.tx.us.

Further Information. For more information, contact the Division of School Improvement and Support by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-5899; by fax at (512) 936-6474; or by email at NCLBTTIPS@tea.state.tx.us.

TRD-201103776
Education Service Center Region 10

Request for Applications

Texas Support for Homeless Education Program (TEXSHEP), School Years 2012 through 2015.

Filing Authority. The availability of subgrant funds under Request for Applications RFA #ESCR-10/H2012-15 is authorized by the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, Public Law 107-110.

Eligible Applicants. The Region 10 Education Service Center is requesting applications from school districts or cooperatives of school districts, regional education service centers, open enrollment charter schools, and county departments of education to facilitate the enrollment, attendance, and school success of homeless children and youth.

Description. Applicants should describe plans to provide tutoring, counseling, social work services, transportation, and other assistance that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include data on the impact of the project on the identification, enrollment, school attendance, and the academic success of homeless students.

Dates of Project. The Texas Support for Homeless Education Program subgrants are funded in three-year competitive subgrant cycles. The first year of the next cycle will be implemented during the 2012-2013 school year. Applicants should plan for a starting date no earlier than September 1, 2012.

Project Amount. Approximately $4 million will be provided for an unspecified number of projects; the number of projects will depend on the number of applicants. Project subgrant awards will range from $20,000 to $235,000 and are dependent upon the number of homeless students and the percentage of homeless students in the districts to be served. Project funding in the second and third years will be based on satisfactory progress of the first- and second-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, the state legislature, and the availability of funding. This project is funded 100% from McKinney-Vento Homeless Education Assistance Act federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The Region 10 ESC reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Region 10 ESC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit Region 10 ESC to pay any costs before an application is approved. The issuance of this RFA does not obligate Region 10 ESC to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the Request For Application ESCR-10/H2012-15 may be downloaded from the Texas Homeless Education Office website at http://www.utdanacenter.org/theo. The application may also be obtained by sending an email to Barbara Wand James at babawawa@austin.utexas.edu or by calling (800) 446-3142 or (512) 475-9702 (in Austin). Please refer to RFA ESCR-10/H2012-15 in your request. Only electronic copies will be provided to anyone requesting copies of the RFA.

Further Information. For clarifying information about the RFA, contact the Texas Homeless Education Office at (800) 446-3142 or (512) 475-9702.

Bidder’s Webinar. Region 10 is holding a bidder’s webinar for those interested in additional information about this RFA on October 6, from 9:30 a.m. until 11:00 a.m. There is no fee to participate in this webinar, however, attendees assume all costs incurred for their participation in this webinar, such as internet costs and long-distance calling costs. Should applicants be awarded a subgrant under this program, their costs to participate in this bidder’s conference may not be charged to the subgrant. Registration for the webinar is required; specific registration instructions, technology requirements, and other related information can be found at the Texas Homeless Education Office website at http://www.utdanacenter.org/theo under the 2012-2015 TEXSHEP section of the website. This bidder’s webinar will be recorded and archived; those unable to attend may review the proceedings at the Texas Homeless Education Office website at http://www.utdanacenter.org/theo under the 2012-2015 TEXSHEP section of the website. Questions regarding the bidder’s webinar may be directed to Barbara James at (800) 446-3142 or (512) 475-8765, or by email at babawawa@mail.utexas.edu. Questions regarding the bidder’s webinar or the TEXSHEP subgrant may be directed to Barbara James by email only at babawawa@mail.utexas.edu. Responses to all questions about the subgrant will be posted on the Texas Homeless Education Office website at http://www.utdanacenter.org/theo under the 2012-2015 TEXSHEP section of the website.

Deadline for Receipt of Application. Applications must be submitted electronically and must be received by the Region 10 ESC business office by 4:30 p.m. (Central Standard Time), Thursday, December 8, 2011, to be considered for approval.

TRD-201103698

Wilburn O. Echols, Jr.
Executive Director
Education Service Center Region 10
 Filed: September 12, 2011

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is October 24, 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

IN ADDITION  September 23, 2011  36 TexReg 6309
plicable 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 October 24, 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 commis-

sion in writing.

(1) COMPANY: A&M Silver, Incorporated dba Winners Corner 2; DOCKET NUMBER: 2011-1037-PWS-E; IDENTIFIER: RN101213916; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code (THSC) §341.031(a), by failing to comply with the maximum contaminant level for total coliform during the month of December 2010; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the month of January 2011 and by failing to provide public notice of the failure to conduct increased monitoring during the month of January 2011; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample during the month of February 2011; and 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source E. coli samples from all sources within 24 hours of being notified of the distribution total coliform-positive sample result during the month of February 2011; PENALTY: $1,516; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ahefaz, LLC dba Saveway Food Market; DOCKET NUMBER: 2011-0566-PST-E; IDENTIFIER: RN100871300; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and making them immediately available for inspection upon request by agency personnel; 30 TAC §334.49(c)(4) and TWC §26.3475(d), by failing to test the cathodic protection system for performance and operability at a frequency of at least once every three years; 30 TAC §334.48(c), 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; and 30 TAC §115.242(3) and THSC §382.085(b), 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; PENALTY: $10,394; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Arkema Incorporated; DOCKET NUMBER: 2011-1069-AIR-E; IDENTIFIER: RN100210301; LOCATION: Crosby, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O1554, Standard Terms and Conditions Number 8, New Source Review Permit Number 6271, Special Conditions Numbers 22.A and B, and THSC §382.085(b), by failing to maintain the temperature above 1,450 degrees Fahrenheit for the thermal oxidizer, Emission Point Number (EPN) 43-TO-1STK, and 1,600 degrees Fahrenheit for thermal oxidizer, EPN 44-TO-1STK; PENALTY: $20,300; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Arrowhead Pipeline, L.P. and Hilcorp Energy Company; DOCKET NUMBER: 2011-0891-AIR-E; IDENTIFIER: RN100212000; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: gas processing plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC §382.0518(a) and §382.085(b), by failing to obtain authorization for all emissions sources at the plant; 30 TAC §115.122(a)(1) and THSC §382.085(b), by failing to control volatile organic compound (VOC) emissions from the amine unit; and 30 TAC §116.110(a) and THSC §382.0518(a) and §382.085(b), by failing to obtain authorization for all emissions sources at the plant; PENALTY: $14,800; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Central Bowie County Water Supply Corpora-

tion; DOCKET NUMBER: 2011-0873-PWS-E; IDENTIFIER: RN101389153; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c), by failing to enclose all portable water storage tanks and pressure maintenance facilities with an intruder-resistant fence with lockable gates; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date data on plans, maps and records; and THSC §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(f)(I) and (3)(A)(iv), by failing to provide facility records to commission personnel at the time of the investigation; and 30 TAC §290.109(c)(2)(B), by failing to collect routine distribution coliform samples at regular time intervals throughout the month, which is required by a public water system which uses surface water or groundwater under the direct influence of surface water; PENALTY: $3,634; ENFORCEMENT COORDINATOR: Michael Sherlock, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Dell; DOCKET NUMBER: 2011-0884-MLM-E; IDENTIFIER: RN101214049; LOCATION: Dell City, Hudspeth County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazard exists; 30 TAC §290.46(m)(1)(A), by failing to inspect the elevated and ground storage tanks on an annual basis; and 30 TAC §305.42(a) and §290.42(i) and TWC §26.121(a) by failing to obtain a discharge permit from the commission prior to any discharge of wastewater; PENALTY: $9,138; ENFORCEMENT COORDINA-


(7) COMPANY: City of Kerrville; DOCKET NUMBER: 2011-0825-
PWS-E; IDENTIFIER: RN101425296; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC §341.0315(c), by failing to comply with the maximum contaminant level of 0.800 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: $695; ENFORCEMENT COORDINATOR: Kat Schu-
(8) COMPANY: City of Killeen and Central Texas - Killeen Memorial Park, Incorporated; DOCKET NUMBER: 2011-0420-WQ-E; IDENTIFIER: RN106076508; LOCATION: Killeen, Bell County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into water in the state; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Crane County Hospital District dba Crane Memorial Hospital; DOCKET NUMBER: 2011-1177-PST-E; IDENTIFIER: RN101798585; LOCATION: Crane, Crane County; TYPE OF FACILITY: hospital with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.51(b) and TWC §26.3475(c)(2), by failing to equip the UST system with spill and oilfield prevention equipment; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: CROWN ENTERPRISES, INCORPORATED dba Central Transport; DOCKET NUMBER: 2011-0631-PST-E; IDENTIFIER: RN102617271; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: freight transport and refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed 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 §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(1)(A) and (2), and TWC §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and also failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: $10,879; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Earthgains Baking Companies, Incorporated; DOCKET NUMBER: 2011-1027-AIR-E; IDENTIFIER: RN100223718; LOCATION: Paris, Lamar County; TYPE OF FACILITY: bakery; RULE VIOLATED: 30 TAC §122.143(8) and §122.146(2), Federal Operating Permit Number O1095, General Terms and Conditions and THSC §382.085(b), by failing to submit a final permit compliance certification within 30 days after the permit was voided; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: Edward W. Sibley dba Memorial Conoco Car Care; DOCKET NUMBER: 2011-1147-PST-E; IDENTIFIER: RN102225307; LOCATION: Houston, Harris 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: $2,350; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Esperanza Water Service Company, Incorporated; DOCKET NUMBER: 2011-0791-WD-E; IDENTIFIER: RN101238483; LOCATION: Fort Hancock, Hudspeth County; TYPE OF FACILITY: reverse osmosis water treatment facility; RULE VIOLATED: 30 TAC §305.125(7) and §305.126(b) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ000307000, Part VI, Standard Provisions G, by failing to notify the TCEQ of a modification to the facility; TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ000307000, Part IV, Conditions of the Permit and Part V, Special Provisions H, by failing to comply with the permitted flow limitations; PENALTY: $4,857; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(14) COMPANY: Harris County Hospital District; DOCKET NUMBER: 2011-0938-PST-E; IDENTIFIER: RN100706035; LOCATION: Houston, Harris County; TYPE OF FACILITY: non-retail Petroleum storage and dispensing facility; 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: $2,250; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Height’s Exxon, Incorporated dba Heights Mobil; DOCKET NUMBER: 2011-0815-PST-E; IDENTIFIER: RN102160330; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC §26.3475(a), by failing to provide a method of release detection for the piping associated with the underground storage tank system; PENALTY: $3,379; ENFORCEMENT COORDINATOR: Michaele Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Hunt County; DOCKET NUMBER: 2011-0319-MSW-E; IDENTIFIER: RN105947139; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: county maintenance facility; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $10,000; Supplemental Environmental Project offset amount of $10,000 applied to Caddo Lake Institute, Caddo Lake Watershed Enhanced Monitoring Program; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: INTERNATIONAL BUSINESS CONNECTION, INCORPORATED dba Quick Shop Food Mart; DOCKET NUMBER: 2011-1290-PST-E; IDENTIFIER: RN101434736; LOCATION: Forth Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512)
239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Kashmir Road Lines LLC dba Chevron Foodmart 159; DOCKET NUMBER: 2011-0903-PST-E; IDENTIFIER: RN101618536; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULE VIOLATED: 30 TAC §115.246(6) and THSC §382.085(b), by failing to maintain Stage II records at the station; 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: $4,104; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

239, at
ditions TPDES (22)

(19) COMPANY: Kashmir Road Lines LLC dba Texaco Foodmart 147; DOCKET NUMBER: 2011-0834-PST-E; IDENTIFIER: RN102030913; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $5,748; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

2011-20073-1486, (713) 767-3500.

(20) COMPANY: LONE STAR CONVENIENCE STORES, INCORPORATED dba Dukes 7; DOCKET NUMBER: 2011-0669-PST-E; IDENTIFIER: RN103016051; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Jamie Geil, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive Fort Worth, Texas 76118-6951, (817) 588-5800.

2011-0784-AIR-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), THSC §382.085(b), New Source Review (NSR) Permit Number 19613, Special Conditions (SC) Number 1, NSR Permit Number 2993, SC Number 1, and Federal Operating Permit Number O1387, Special Terms and Conditions, by failing to prevent unauthorized emissions during an emissions event that occurred on February 2, 2011 to February 3, 2011 (Incident Number 150156); PENALTY: $6,625; Supplemental Environmental Project offset amount of $2,650 applied to Sheltering Arms Weatherization Assistance Program; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

2011-0571-IWD-E; IDENTIFIER: RN100250133; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum bulk terminal; RULE VIOLATED: 30 TAC §305.125(1) and (17), §319.7(d), and TPDES General Permit Number TXG341505, Standard Permit Conditions Number 7.(f), by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17), §319.7(d), and TPDES General Permit Number TXG341505, Standard Permit Conditions Number 7.(i), by failing to annually prepare and submit a metals monitoring report and the annual whole effluent toxicity report; PENALTY: $13,125; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

2011-0849-PST-E; IDENTIFIER: RN100910397; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

2011-0903-PST-E; IDENTIFIER: RN104215330; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and TWC §26.3475(d), by failing to provide corrosion protection to all underground components of the underground storage tank (UST) system which are designed or used to convey, contain, or store regulated substances; and 30 TAC §334.50(b)(2) and TWC §26.3475(a), by failing to provide release detection for the UST associated with the USTs; PENALTY: $5,129; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

2011-1130-PST-E; IDENTIFIER: RN104162557; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and also failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $2,429; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201103761
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2011

Notice of Water Quality Applications
The following notices were issued on September 2, 2011 through September 9, 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
ACME BRICK COMPANY which operates the Hobson Pit, a clay mining site, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ000338000, which authorizes the discharge of mine drainage water and storm water runoff on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 220 Daniels Street, adjacent to the east side of U.S.
Highway 377, approximately one-mile south of the intersection of U.S. Highway 377 and Interstate Highway 35E in the City of Denton, Denton County, Texas 76205.

EXTEX LAPIORTE LIMITED PARTNERSHIP which operates the Handley Steam Electric Station, has applied for a renewal of TCEQ Permit No. WQ00055200, which authorizes the discharge of once through cooling water and previously monitored effluent (low volume wastewater) at a daily average flow not to exceed 1,280,000,000 gallons per day via Outfall 001. The draft permit authorizes the discharge of once through cooling water from Units 3, 4, and 5, and previously monitored effluents (low volume wastewater and storm water runoff) at a daily average flow not to exceed 1,280,000,000 gallons per day via Outfall 001. The facility is located at 6604 East Rosedale Street on the northwest shore of Lake Arlington immediately southeast of the Interstate Highway 820 and Rosedale Street interchange in the City of Forth Worth, Tarrant County, Texas 76112.

Brownsville Navigation District, which operates Fishing Harbor Wastewater Treatment Plant, has applied for a renewal of TPDES Permit No. WQ000281700, which authorizes the discharge of treated domestic wastewater, shrimp processing wastewater, shrimp boat bilge water, and storm water at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. The facility is located on the south side of State Highway 48, approximately 5.4 miles east of the intersection of State Highway 48 and Farm-to-Market Road 511, northeast of the City of Brownsville, Texas.

THE CITY OF BEAUMONT, AND JEFFERSON COUNTY DRAINAGE DISTRICT NO 6 which operate the City of Beaumont Municipal Separate Storm Sewer System (MS4) have applied for a renewal of TPDES Permit No. WQ0004637000 (TXS000501) to authorize storm water point source discharges to surface water in the state from the City of Beaumont MS4. The MS4 is located within the corporate boundary of the City of Beaumont and within the jurisdiction of Jefferson County Drainage District No. 6 that is within the corporate boundary of the City of Beaumont, in Jefferson County, Texas 77765, 77701, 77702, 77703, 77704, 77705, 77706, 77707, 77708, 77709, 77710, 77713, 77720, 77725, 77726.

AES DEEPWATER INC which operates AES Deepwater Cogeneration Plant, has applied for a renewal of TPDES Permit No. WQ0004795000, which authorizes the discharge of cooling tower blowdown, previously monitored effluents (PMEs) (low volume waste sources and coke pile runoff), and storm water at a daily average flow not to exceed 1,400,000 gallons per day via Outfall 001. This application was submitted to TCEQ on February 28, 2011. The facility is located at 701 Light Company Road in Pasadena, Harris County, Texas 77506.

CITY OF KOUNTZE has applied for a renewal of TPDES Permit No. WQ0010203003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 5,000 feet east-northeast of the intersection of U.S. Highway 69 and State Highway 326, and approximately 0.25 mile southeast of the intersection of Old Highway 418 and the Gulf Colorado and Santa Fe Railroad in Hardin County, Texas 77625.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11 has applied for a renewal of TPDES Permit No. WQ0011351001, 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 10675 Veterans Memorial Boulevard, approximately 500 feet west of the intersection of Steubner-Airline Road and Aldine Western Road and south of and adjacent to a Harris County Flood Control District ditch (HCFCD) in Harris County, Texas 77038.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. WQ00012190001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day. The facility is located within Purris Creek State Park at 14225 Farm-to-Market Road 316 North, in the City of Eustace in Henderson County, Texas 75124.

KWIK KOPY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013059001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located near 12715 Telge Road, approximately 1.25 miles north of the intersection of Telge Road and State Highway 6 and U.S. Highway 290 in Harris County, Texas 77429.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0013209001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 4,000 feet southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 3126 in Polk County, Texas 77351.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0014096001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1500 feet north of Farm-to-Market Road 356, approximately 1.5 miles east of the intersection of Farm-to-Market Road 356 and Farm-to-Market Road 355 in Trinity County, Texas 75862.

FERN DEVELPMENT LTD AND LENCO DEVELOPMENT LTD AND NORCO DEVELOPMENT LTD has applied for a renewal of TPDES Permit No. WQ0014825001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 7200 White Oak Circle, approximately 500 feet east of Windfern Road on the south bank of Whiteoak Bayou and one mile northeast of U.S. Highway 290 and approximately 14 miles northeast of the City of Houston central business district in Harris County, Texas 77040.

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 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0004051000 issued to Frontera Generation Limited Partnership, 320 South Goodwin Road, Mission, Texas 78572, which operates Frontera Energy Center, a combined cycle electric power generation station, to authorize a change in test species from the Ceriodaphnia dubia to the Daphnia magna for chronic freshwater WET testing, as the Daphnia magna was the test species in the previous permit due to naturally occurring Total Dissolved Solids levels in the receiving waters. The existing permit authorizes the discharge of storm water, low volume waste sources, and cooling tower blowdown at a daily average flow not to exceed 1,400,000 gallons per day via Outfall 001. The facility is located at 320 South Goodwin Road, one mile south of the intersection of U.S. Business Highway 83 and State Highway 492, and approximately four miles west of the City of Mission, Hidalgo County, Texas 78572.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, 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 infor­ma­tion en espanol, puede llamar al (800) 687-4040.
Texas Superfund Registry

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC) Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the Texas Register (12 TexReg 205). In accordance with THSC §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC §361.184(a) and listed in accordance with THSC §361.188(a)(1) (see also 30 TAC §335.343) or to remove facilities that have been delisted in accordance with THSC §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with THSC §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of Hazard Ranking System (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.
2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.
3. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: specialty chemical and toll manufacturing facility.
4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.
5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.
6. Voda Petroleum, Inc. Located approximately 1.25 mile west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM Number 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: former waste oil recycling facility.
7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.
8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.
10. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.
12. McBry Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.
15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.
16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.
17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.
18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.
19. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.
20. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.
21. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.
22. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.
23. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.
24. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.
26. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with THSC §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.
2. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM 1431 in the community of Kingsland, Llano County: two groundwater plumes.
3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.
4. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County, Texas: former fuel storage and fuel blending/distillation facility.

5. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

6. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

7. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of U.S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

8. Poly-Cycle Industries, Inc, Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

9. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.


11. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.


14. Hu-Mar Chemicals. Located north of McGothin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.


16. Moss Lake Road Groundwater Site. Located approximately 1/4 mile north of the intersection of North Moss Lake Road and Interstate 20, approximately 4 miles east of Big Spring, Howard County: groundwater plume of an unknown source.

17. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Rbstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.


19. San Angelo Electrical Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer service, building and repair facility.


22. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

23. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

24. Woodward Industries, Inc. Located on County 816, about 6 miles north of the city of Nacogdoches in Nacogdoches County: wood treating.

Since the last publication in the November 5, 2010, issue of the Texas Register (35 TexReg 9941), no additional sites were proposed to the state Superfund registry.

To date, 47 sites have been deleted from the state Superfund registry in accordance with THSC §361.189 (see also 30 TAC §335.344); Aluminum Finishing Company, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow’s Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Force Road Oil, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Croesoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corporation, Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimberly County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Croesoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refineries I, Hardin County; Rio Grande Refineries II, Hardin County; Rogers Delinkt Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; Shelby Wood Specialty, In., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in January 22, 1988, issue of the Texas Register (13 TexReg 427).

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, telephone (800) 633-9363 or (512) 239-2929. Parking for mobility impaired persons is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

TRD-201103740
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2011

IN ADDITION September 23, 2011 36 TexReg 6315
Texas Board of Professional Geoscientists

Advisory Opinion - AOR #5 (2011)

Is the Texas Commission on Environmental Quality (TCEQ) Petroleum Storage Tank (PST) Division contributing to violations of the Texas Geoscience Practice Act?

No.

Also, do companies have to be registered Geoscience/Engineering Firms to perform environmental geoscience work and submit reports to the TCEQ Voluntary Cleanup Program (VCP) and Industrial Hazardous Waste - Corrective Action Program?

Not all corrective actions require geoscientific work that is regulated by the Texas Geoscience Practice Act, Texas Occupations Code Chapter 1002 (Act). Those corrective actions which constitute work that is regulated by the Texas Geoscience Practice Act would be in violation of the Act if not performed by a licensed Professional Geoscientist and/or Professional Geoscience Firm independent of and without regard to any other requirements or registrations under the Texas Commission on Environmental Quality (TCEQ). Work that is not regulated under the Texas Geoscience Practice Act is not required to be performed by a licensed P.G. and/or Professional Geoscience Firm. Work that is regulated must be submitted under seal to certify that the geoscience work has been performed by a licensed P.G. and/or Professional Geoscience Firm.

Geoscience, under the Texas Occupations Code §1002.002(3), means "the science of the earth and its origin and history, the investigation of the earth’s environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth."

Please also see Advisory Opinion #4 with respect to "responsible charge."

Still what does the definition of public mean?

Texas Occupations Code §1002.002(7) defines the public practice of geoscience as "the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks." "Practice for the public" is further defined in the Texas Occupations Code §1002.002(6): "(A) means providing professional geoscientific services: (i) for a governmental entity in this state; (ii) to comply with a rule established by this state or a political subdivision of this state; or (iii) for the public or a firm or corporation in this state if the practitioner assumes the ultimate liability for the work product; and (B) does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product."

TRD-201103694
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Filed: September 9, 2011

Any interested person may submit written comments concerning this Advisory Opinion Request and Draft Opinion to: Charles Horton, Executive Director, P.O. Box 13225, Austin, Texas 78711, or by e-mail to chorton@tbpg.state.tx.us or by fax to (512) 936-4409. Comments must be submitted no later than 30 days from the date of the posting in the Texas Register. Please reference Advisory Opinion Request #6.

Draft Opinion

No. Most work which is conducted for the purpose of influencing legislation, regulation, or for the benefit of the public, in addition to work which is supported by or in collaboration with private entities, requires a Professional Geoscientist taking responsible charge of a geoscientific report or a geoscientific portion of a report, in compliance with Texas Occupations Code §1002.251(c).

TRD-201103720
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Filed: September 12, 2011

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services a request for extension for the renewal of the Women’s Health Program (WHP) demonstration waiver, which is a Medicaid family planning waiver under the authority of §1115 of the Social Security Act. The current waiver expires December 31, 2011. The proposed effective date of the extension is January 1, 2012.

The 2012-2013 General Appropriations Act (Article II, Health and Human Services Commission, Rider 62, House Bill 1, 82nd Legislature, Regular Session, 2011) requires HHSC, contingent upon receiving authority under §1115 of the Social Security Act, to continue providing Medicaid Women’s Health Program services to eligible women.

The Women’s Health Program currently provides family planning services for uninsured women, ages 18 through 44, who are not otherwise eligible for Medicaid, the State Children’s Health Insurance Program, or Medicare, and who have a family income at or below 185 percent of the federal poverty level. With the waiver extension, HHSC proposes to add coverage of treatment for sexually transmitted diseases (STDs).

In its first three years, the WHP caseload grew to about 152,000 enrollees. The program averted approximately 17,000 Medicaid births and resulted in estimated net savings of over $120 million, including both federal and state funds. In years six and seven, the WHP is expected to have a caseload of over 250,000 enrollees per year and save a total of almost $160 million, including both federal and state funds. These projections include the cost of expanding WHP services in years six and seven to provide treatment for STDs.

To obtain copies of the proposed waiver extension or to make written comments regarding the proposed waiver renewal, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200; telephone (512) 491-1152; fax (512) 491-1957; or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201103741
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 13, 2011

Department of State Health Services
Licensing Actions for Radioactive Materials

IN ADDITION  September 23, 2011  36 TexReg 6317
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:

<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>City</th>
<th>Amendment #</th>
<th>Date of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richardson</td>
<td>MHSR Medical Center dba Methodist Richardson Medical Center</td>
<td>L06421</td>
<td>Richardson</td>
<td>00</td>
<td>08/16/11</td>
</tr>
<tr>
<td>Southlake</td>
<td>Medx Imaging, L.L.C.</td>
<td>L06422</td>
<td>Southlake</td>
<td>00</td>
<td>08/16/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Advanced Inspection Technologies, L.L.C.</td>
<td>L06423</td>
<td>Spring</td>
<td>00</td>
<td>08/23/11</td>
</tr>
</tbody>
</table>

AMENDMENTS TO EXISTING LICENSES ISSUED:

<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>City</th>
<th>Amendment #</th>
<th>Date of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alvarado</td>
<td>Recon Petrotechnologies, Inc.</td>
<td>L06026</td>
<td>Alvarado</td>
<td>13</td>
<td>08/25/11</td>
</tr>
<tr>
<td>Amaroilo</td>
<td>Texas Oncology, P.A. dba Texas Oncology Cancer Center - Amaroilo</td>
<td>L06149</td>
<td>Amaroilo</td>
<td>04</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Amaroilo</td>
<td>Cardiology Center of Amaroilo, L.L.P.</td>
<td>L05736</td>
<td>Amaroilo</td>
<td>13</td>
<td>08/11/11</td>
</tr>
<tr>
<td>Austin</td>
<td>Texas Oncology, P.A. dba Central Austin Cancer</td>
<td>L06090</td>
<td>Austin</td>
<td>03</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Austin</td>
<td>ARA Imaging</td>
<td>L05862</td>
<td>Austin</td>
<td>52</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Austin</td>
<td>St. David's Healthcare Partnership, L.P., L.L.P. dba North Austin Medical Center</td>
<td>L04910</td>
<td>Austin</td>
<td>91</td>
<td>08/26/11</td>
</tr>
<tr>
<td>Austin</td>
<td>Austin Radiological Association</td>
<td>L00545</td>
<td>Austin</td>
<td>168</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Bay City</td>
<td>Equistar Chemicals, L.P.</td>
<td>L03938</td>
<td>Bay City</td>
<td>27</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Baytown</td>
<td>Chevron Phillips Chemical Company, L.P.</td>
<td>L00962</td>
<td>Baytown</td>
<td>41</td>
<td>08/25/11</td>
</tr>
<tr>
<td>Beeville</td>
<td>Christus Spohn Health System Corporation dba Christus Spohn Hospital Beeville</td>
<td>L04510</td>
<td>Beeville</td>
<td>28</td>
<td>08/11/11</td>
</tr>
<tr>
<td>Beeville</td>
<td>Christus Spohn Health System Corporation dba Christus Spohn Hospital Beeville</td>
<td>L04510</td>
<td>Beeville</td>
<td>29</td>
<td>08/22/11</td>
</tr>
<tr>
<td>Bellaire</td>
<td>Texas Nuclear Imaging, Inc. dba Excel Diagnostics Imaging Clinical Medical Center</td>
<td>L05009</td>
<td>Bellaire</td>
<td>37</td>
<td>08/17/11</td>
</tr>
<tr>
<td>Big Spring</td>
<td>Big Spring Hospital Corporation dba Scenic Mountain Medical Center</td>
<td>L00763</td>
<td>Big Spring</td>
<td>58</td>
<td>08/11/11</td>
</tr>
<tr>
<td>Burnet</td>
<td>Seton Healthcare dba Seton Highland Lakes Hospital</td>
<td>L03515</td>
<td>Burnet</td>
<td>45</td>
<td>08/17/11</td>
</tr>
<tr>
<td>College Station</td>
<td>Texas A&amp;M University</td>
<td>L05683</td>
<td>College Station</td>
<td>16</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Columbus</td>
<td>Columbus Community Hospital</td>
<td>L03508</td>
<td>Columbus</td>
<td>20</td>
<td>08/24/11</td>
</tr>
<tr>
<td>Conroe</td>
<td>Sadler Clinic/Montgomery County Management Company</td>
<td>L04899</td>
<td>Conroe</td>
<td>31</td>
<td>08/24/11</td>
</tr>
<tr>
<td>Corpus Christi</td>
<td>Sherwin Alumina, L.P. dba Sherwin Alumina Company</td>
<td>L00200</td>
<td>Corpus Christi</td>
<td>48</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Dallas</td>
<td>Deuteronomy dba The Harper Clinic</td>
<td>L06195</td>
<td>Dallas</td>
<td>02</td>
<td>08/18/11</td>
</tr>
<tr>
<td>Dallas</td>
<td>Presbyterian Cancer Center-Dallas, L.L.C.</td>
<td>L06056</td>
<td>Dallas</td>
<td>04</td>
<td>08/19/11</td>
</tr>
<tr>
<td>Dallas</td>
<td>University of Texas Southwestern Medical Center at Dallas</td>
<td>L05947</td>
<td>Dallas</td>
<td>19</td>
<td>08/22/11</td>
</tr>
<tr>
<td>Dallas</td>
<td>University of Texas Southwestern Medical Center at Dallas</td>
<td>L05947</td>
<td>Dallas</td>
<td>20</td>
<td>08/25/11</td>
</tr>
<tr>
<td>Dallas</td>
<td>PETNET Solutions, Inc.</td>
<td>L05193</td>
<td>Dallas</td>
<td>39</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Edinburg</td>
<td>Doctors Hospital at Renaissance, Ltd.</td>
<td>L05761</td>
<td>Edinburg</td>
<td>29</td>
<td>08/16/11</td>
</tr>
<tr>
<td>El Paso</td>
<td>Southwest X-Ray, L.P.</td>
<td>L05207</td>
<td>El Paso</td>
<td>13</td>
<td>08/24/11</td>
</tr>
<tr>
<td>Fort Worth</td>
<td>Dallas Cardiology Associates, P.A.</td>
<td>L05883</td>
<td>Fort Worth</td>
<td>05</td>
<td>08/24/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Northwest Diagnostic Clinic, P.A.</td>
<td>L05814</td>
<td>Houston</td>
<td>08</td>
<td>08/12/11</td>
</tr>
</tbody>
</table>
AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>City</th>
<th>Amendment #</th>
<th>Date of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houston</td>
<td>Cambridge Heart Center, P.A.</td>
<td>L05623</td>
<td>Houston</td>
<td>12</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Houston</td>
<td>American Diagnostic Tech, L.L.C.</td>
<td>L05514</td>
<td>Houston</td>
<td>64</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Houston</td>
<td>American Diagnostic Tech, L.L.C.</td>
<td>L05514</td>
<td>Houston</td>
<td>65</td>
<td>08/17/11</td>
</tr>
<tr>
<td>Houston</td>
<td>American Diagnostic Tech, L.L.C.</td>
<td>L05514</td>
<td>Houston</td>
<td>66</td>
<td>08/23/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Platinum Energy Solutions, Inc.</td>
<td>L06410</td>
<td>Houston</td>
<td>01</td>
<td>08/16/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Centronics, L.L.C.</td>
<td>L06164</td>
<td>Houston</td>
<td>03</td>
<td>08/22/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Gulf Coast Cancer and Diagnostic Center at Southeast, Inc.</td>
<td>L05194</td>
<td>Houston</td>
<td>14</td>
<td>08/19/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Methodist Health Centers dba Methodist West Houston Hospital</td>
<td>L06358</td>
<td>Houston</td>
<td>01</td>
<td>08/26/11</td>
</tr>
<tr>
<td>Houston</td>
<td>The University of Texas M.D. Anderson Cancer Center</td>
<td>L06227</td>
<td>Houston</td>
<td>21</td>
<td>08/29/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Houston Northwest Operating Company, L.L.C.</td>
<td>L06190</td>
<td>Houston</td>
<td>12</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Houston</td>
<td>Memorial Hermann Hospital System dba Memorial Hospital Memorial City</td>
<td>L01168</td>
<td>Houston</td>
<td>129</td>
<td>08/31/11</td>
</tr>
<tr>
<td>Humble</td>
<td>Humble Surgical Hospital</td>
<td>L06357</td>
<td>Humble</td>
<td>02</td>
<td>08/18/11</td>
</tr>
<tr>
<td>Humble</td>
<td>Humble Surgical Hospital</td>
<td>L06357</td>
<td>Humble</td>
<td>03</td>
<td>08/22/11</td>
</tr>
<tr>
<td>La Porte</td>
<td>CardioRad, Inc.</td>
<td>L05755</td>
<td>La Porte</td>
<td>19</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Lewisville</td>
<td>Columbia Medical Center of Lewisville Subsidiary, L.P. dba Medical Center of Lewisville</td>
<td>L02739</td>
<td>Lewisville</td>
<td>58</td>
<td>08/23/11</td>
</tr>
<tr>
<td>McAllen</td>
<td>Valley Positron, L.L.C.</td>
<td>L05869</td>
<td>McAllen</td>
<td>05</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Midland</td>
<td>Midland Cardiac Clinic</td>
<td>L05571</td>
<td>Midland</td>
<td>06</td>
<td>08/17/11</td>
</tr>
<tr>
<td>Midland</td>
<td>Midland Cardiac Clinic</td>
<td>L05571</td>
<td>Midland</td>
<td>07</td>
<td>08/26/11</td>
</tr>
<tr>
<td>Nassau Bay</td>
<td>Christus Health dba Christus St. John Hospital</td>
<td>L03291</td>
<td>Nassau Bay</td>
<td>34</td>
<td>08/22/11</td>
</tr>
<tr>
<td>Nederland</td>
<td>Turner Specialty Services, L.L.C.</td>
<td>L05417</td>
<td>Nederland</td>
<td>40</td>
<td>08/25/11</td>
</tr>
<tr>
<td>Odessa</td>
<td>Texas Oncology, P.A. dba West Texas Cancer Center</td>
<td>L05140</td>
<td>Odessa</td>
<td>13</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Paris</td>
<td>Physician Reliance Network, Inc. dba Paris Regional Cancer Center</td>
<td>L04664</td>
<td>Paris</td>
<td>23</td>
<td>08/18/11</td>
</tr>
<tr>
<td>Plano</td>
<td>Columbia Medical Center of Plano Subsidiary, L.P. dba Medical Center of Plano</td>
<td>L02032</td>
<td>Plano</td>
<td>95</td>
<td>08/18/11</td>
</tr>
<tr>
<td>Plano</td>
<td>Physician Reliance Network, Inc. dba Texas Oncology Plano West Cancer Center</td>
<td>L05896</td>
<td>Plano</td>
<td>19</td>
<td>08/16/11</td>
</tr>
<tr>
<td>Port Neches</td>
<td>Huntsman Petrochemical, L.L.C.</td>
<td>L06323</td>
<td>Port Neches</td>
<td>01</td>
<td>08/29/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>M. M. Ontiveros, M.D., P.A.</td>
<td>L05675</td>
<td>San Antonio</td>
<td>09</td>
<td>08/15/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>Christus Santa Rosa Health Care</td>
<td>L02237</td>
<td>San Antonio</td>
<td>131</td>
<td>08/18/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>VHS San Antonio Partners, L.L.C. dba Baptist Health System</td>
<td>L00455</td>
<td>San Antonio</td>
<td>211</td>
<td>08/26/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>South Texas Radiology Imaging Centers</td>
<td>L00325</td>
<td>San Antonio</td>
<td>198</td>
<td>08/18/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>O'Neill and Associates, P.A.</td>
<td>L03710</td>
<td>San Antonio</td>
<td>17</td>
<td>08/23/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>The University of Texas Health Science Center at San Antonio</td>
<td>L01279</td>
<td>San Antonio</td>
<td>132</td>
<td>08/23/11</td>
</tr>
<tr>
<td>San Antonio</td>
<td>PETNET Solutions, Inc.</td>
<td>L05569</td>
<td>San Antonio</td>
<td>23</td>
<td>08/23/11</td>
</tr>
<tr>
<td>Sherman</td>
<td>Sherman/Grayson Hospital, L.L.C. dba Texas Health Presbyterian Hospital-WNJ</td>
<td>L06354</td>
<td>Sherman</td>
<td>03</td>
<td>08/26/11</td>
</tr>
<tr>
<td>Stafford</td>
<td>Aloki Enterprise, Inc.</td>
<td>L06257</td>
<td>Stafford</td>
<td>16</td>
<td>08/17/11</td>
</tr>
<tr>
<td>Sugar Land</td>
<td>Houston Cardiovascular Consultants, L.L.P. dba Houston Cardiovascular Imaging</td>
<td>L05350</td>
<td>Sugar Land</td>
<td>17</td>
<td>08/23/11</td>
</tr>
</tbody>
</table>
AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>City</th>
<th>Amendment #</th>
<th>Date of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas City</td>
<td>BP Products North America, Inc.</td>
<td>L00254</td>
<td>Texas City</td>
<td>69</td>
<td>08/25/11</td>
</tr>
<tr>
<td>The Woodlands</td>
<td>Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands</td>
<td>L03772</td>
<td>The Woodlands</td>
<td>86</td>
<td>08/24/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>J-W Wireline Company</td>
<td>L06132</td>
<td>Addison</td>
<td>18</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Amarillo Testing &amp; Engineering, Inc.</td>
<td>L02658</td>
<td>Amarillo</td>
<td>18</td>
<td>08/11/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Texas Department of Transportation</td>
<td>L00197</td>
<td>Austin</td>
<td>157</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>ATC Group Services, Inc. dba ATC Associates, Inc.</td>
<td>L05920</td>
<td>Carrolton</td>
<td>06</td>
<td>08/22/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Tapco International, Inc. dba Tapco Enpro International</td>
<td>L04990</td>
<td>Channelview</td>
<td>28</td>
<td>08/29/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Rock Engineering and Testing Laboratory, Inc.</td>
<td>L05168</td>
<td>Corpus Christi</td>
<td>11</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Professional Services Industries, Inc.</td>
<td>L04940</td>
<td>Dallas</td>
<td>12</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Uranium Energy Corporation</td>
<td>L06127</td>
<td>Goliad</td>
<td>01</td>
<td>08/23/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Golder Associates, Inc.</td>
<td>L04645</td>
<td>Houston</td>
<td>09</td>
<td>08/12/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Baker Hughes Oilfield Operations, Inc. dba Baker Atlas</td>
<td>L00446</td>
<td>Houston</td>
<td>164</td>
<td>08/17/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Alliance Laboratories, Inc.</td>
<td>L05586</td>
<td>Houston</td>
<td>05</td>
<td>08/29/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Effective Environmental, Inc.</td>
<td>L06322</td>
<td>Mesquite</td>
<td>01</td>
<td>08/29/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Warrior Energy Services Corporation</td>
<td>L06342</td>
<td>Odessa</td>
<td>02</td>
<td>08/15/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Quantum Technical Services, L.L.C.</td>
<td>L06406</td>
<td>Pasadena</td>
<td>02</td>
<td>08/23/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Petrochem Inspection Services, Inc.</td>
<td>L04460</td>
<td>Pasadena</td>
<td>109</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Schlumberger Technology Corporation</td>
<td>L00764</td>
<td>Sugar Land</td>
<td>122</td>
<td>08/30/11</td>
</tr>
<tr>
<td>Webster</td>
<td>CHCA Clear Lake, L.P. dba Clear Lake Regional Medical Center</td>
<td>L01680</td>
<td>Webster</td>
<td>79</td>
<td>08/26/11</td>
</tr>
<tr>
<td>Wichita Falls</td>
<td>Clinics of North Texas, L.L.P.</td>
<td>L00523</td>
<td>Wichita Falls</td>
<td>56</td>
<td>08/18/11</td>
</tr>
<tr>
<td>Wichita Falls</td>
<td>Andre P. Desire, M.D., P.A.</td>
<td>L06043</td>
<td>Wichita Falls</td>
<td>04</td>
<td>08/18/11</td>
</tr>
<tr>
<td>Wichita Falls</td>
<td>United Regional Health Care System, Inc.</td>
<td>L00350</td>
<td>Wichita Falls</td>
<td>111</td>
<td>08/17/11</td>
</tr>
<tr>
<td>Wichita Falls</td>
<td>Kell West Regional Hospital, L.L.C.</td>
<td>L05943</td>
<td>Wichita Falls</td>
<td>10</td>
<td>08/24/11</td>
</tr>
</tbody>
</table>

RENEWAL OF LICENSES ISSUED:

<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>City</th>
<th>Amendment #</th>
<th>Date of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texarkana</td>
<td>Collom &amp; Carney Clinic Association</td>
<td>L05524</td>
<td>Texarkana</td>
<td>06</td>
<td>08/09/11</td>
</tr>
<tr>
<td>Throughout TX</td>
<td>Austin Reed Engineers, L.L.C.</td>
<td>L05578</td>
<td>Houston</td>
<td>07</td>
<td>08/17/11</td>
</tr>
</tbody>
</table>

TERMINATIONS OF LICENSES ISSUED:

<table>
<thead>
<tr>
<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>City</th>
<th>Amendment #</th>
<th>Date of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arlington</td>
<td>Ellahi Heart Clinic</td>
<td>L06166</td>
<td>Arlington</td>
<td>01</td>
<td>08/09/11</td>
</tr>
<tr>
<td>Bryan</td>
<td>Osmotics-Poretics</td>
<td>L04065</td>
<td>Bryan</td>
<td>09</td>
<td>08/10/11</td>
</tr>
<tr>
<td>Crowley</td>
<td>Aztec Manufacturing Partnership, Ltd.</td>
<td>L05056</td>
<td>Crowley</td>
<td>04</td>
<td>08/05/11</td>
</tr>
</tbody>
</table>

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-201103682
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 8, 2011

Heart of Texas Council of Governments
Request for Proposal - Auditing Services

The Heart of Texas Council of Governments (HOTCOG) is soliciting proposals for an audit of all grants and programs of the Council. This proposal will serve as a basis for a one-year period beginning October 1, 2010 through September 30, 2011. Contract term may be extended for up to three (3) years.

The audit must be conducted under the guidelines of generally accepted auditing standards and other guidelines as presented in HOTCOG’s request for proposal. The proposals will be reviewed by HOTCOG and a contract will be awarded on the basis of the firm’s experience, firm knowledge of the work to be performed, and the proposed audit cost by year. Small, female-owned and minority-owned firms are encouraged to submit.

Request for proposal packages may be obtained by contacting John C. Minnix, Director of Administration, HOTCOG, 1514 South New Road, Waco, Texas, 76711, (254) 292-1800. Proposal packages will not be faxed or emailed. All proposals must be received no later than 4:30 p.m. (Central Standard Time) on October 7, 2011. Proposals received after the specified date and time will not be considered.

TRD-201103738
Mary McDow
Personnel Manager
Heart of Texas Council of Governments
Filed: September 12, 2011

Texas Judicial Council
Request for Applications for Texas Counties - FY 2012 Formula Grant Program

Texas Indigent Defense Commission (formerly the Texas Task Force on Indigent Defense)

Visit website at www.txcourts.gov/tidc for more information.

Contact: Brian Wilson, Grants Administrator
Telephone: (512) 936-6996

TRD-201103749
James Bethke
Executive Director, Texas Indigent Defense Commission
Texas Judicial Council
Filed: September 13, 2011

Texas Lottery Commission
Instant Game Number 1367 "Black Onyx 7’s"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1367 is "BLACK ONYX 7’S“. The play style is "key number match with doubler".

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1367 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1367.
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 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, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL, BLACK SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 or $70,000.
D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
</tr>
<tr>
<td>3</td>
<td>THR</td>
</tr>
<tr>
<td>4</td>
<td>FOR</td>
</tr>
<tr>
<td>5</td>
<td>FIV</td>
</tr>
<tr>
<td>6</td>
<td>SIX</td>
</tr>
<tr>
<td>8</td>
<td>EGT</td>
</tr>
<tr>
<td>9</td>
<td>NIN</td>
</tr>
<tr>
<td>10</td>
<td>TEN</td>
</tr>
<tr>
<td>11</td>
<td>ELV</td>
</tr>
<tr>
<td>12</td>
<td>TLV</td>
</tr>
<tr>
<td>13</td>
<td>TRN</td>
</tr>
<tr>
<td>14</td>
<td>FTN</td>
</tr>
<tr>
<td>15</td>
<td>FFN</td>
</tr>
<tr>
<td>16</td>
<td>SXN</td>
</tr>
<tr>
<td>18</td>
<td>ETN</td>
</tr>
<tr>
<td>19</td>
<td>NTN</td>
</tr>
<tr>
<td>20</td>
<td>TWY</td>
</tr>
<tr>
<td>21</td>
<td>TWON</td>
</tr>
<tr>
<td>22</td>
<td>TWTO</td>
</tr>
<tr>
<td>23</td>
<td>TWTH</td>
</tr>
<tr>
<td>24</td>
<td>TWFR</td>
</tr>
<tr>
<td>25</td>
<td>TWFT</td>
</tr>
<tr>
<td>26</td>
<td>TWSX</td>
</tr>
<tr>
<td>28</td>
<td>TWET</td>
</tr>
<tr>
<td>29</td>
<td>TWNI</td>
</tr>
<tr>
<td>30</td>
<td>TRTY</td>
</tr>
<tr>
<td>31</td>
<td>TRON</td>
</tr>
<tr>
<td>32</td>
<td>TRTO</td>
</tr>
<tr>
<td>33</td>
<td>TRTH</td>
</tr>
<tr>
<td>34</td>
<td>TRFR</td>
</tr>
<tr>
<td>35</td>
<td>TRFW</td>
</tr>
<tr>
<td>36</td>
<td>TRSX</td>
</tr>
<tr>
<td>38</td>
<td>TRET</td>
</tr>
<tr>
<td>39</td>
<td>TRNI</td>
</tr>
<tr>
<td>40</td>
<td>FRTY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7 SYMBOL</th>
<th>70 THOU</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BLACK SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>WINX5</td>
<td>$70,000</td>
</tr>
<tr>
<td>FIVE$</td>
<td>$2,000</td>
</tr>
<tr>
<td>TEN$</td>
<td>$500</td>
</tr>
<tr>
<td>FIFTN</td>
<td>$100</td>
</tr>
<tr>
<td>TWENTY</td>
<td>$500</td>
</tr>
<tr>
<td>FORTY</td>
<td>$100</td>
</tr>
<tr>
<td>FIFTY</td>
<td>$2,000</td>
</tr>
<tr>
<td>ONE HUND</td>
<td>$500</td>
</tr>
<tr>
<td>FIV HUND</td>
<td>$100</td>
</tr>
<tr>
<td>TWO THOU</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$70,000</td>
</tr>
</tbody>
</table>
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial 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 $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $70,000.

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 (1367), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1367-0000001-001.

K. Pack - A pack of "BLACK ONYX 7'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACK ONYX 7'S" Instant Game No. 1367 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 "BLACK ONYX 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "7" play symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals the word "BLACK", the player wins 5 TIMES 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 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery’s Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery’s Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director’s discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director’s discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.
B. The "7" (doublor) and "BLACK" (win x 5) play symbols will only appear on intended winning tickets as dictated by the prize structure.
C. No more than four (4) duplicate non-winning prize symbols will appear on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No prize amount in a non-winning spot will correspond with the play symbol (i.e., $20 and $20).

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACK ONYX 7'S" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BLACK ONYX 7'S" Instant Game prize of $2,000 or $70,000 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 "BLACK ONYX 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The 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 "BLACK ONYX 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor’s family or the minor’s guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BLACK ONYX 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor’s family or the minor’s guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §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 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 6,000,000 tickets in the Instant Game No. 1367. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1367 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>560,000</td>
<td>10.71</td>
</tr>
<tr>
<td>$10</td>
<td>600,000</td>
<td>10.00</td>
</tr>
<tr>
<td>$15</td>
<td>160,000</td>
<td>37.50</td>
</tr>
<tr>
<td>$20</td>
<td>200,000</td>
<td>30.00</td>
</tr>
<tr>
<td>$50</td>
<td>17,500</td>
<td>342.86</td>
</tr>
<tr>
<td>$100</td>
<td>20,250</td>
<td>296.30</td>
</tr>
<tr>
<td>$500</td>
<td>3,250</td>
<td>1,846.15</td>
</tr>
<tr>
<td>$2,000</td>
<td>130</td>
<td>46,153.85</td>
</tr>
<tr>
<td>$70,000</td>
<td>6</td>
<td>1,000,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1367 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant ticket 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. 1367, 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-201103724
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 12, 2011

Instant Game Number 1371 "Holiday Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1371 is "HOLIDAY GOLD." The play style is "other."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1371 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1371.

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 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: $2.00, $3.00, $4.00, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $200, $500, $1,000 and $20,000. The possible red play symbols are: $2.00, $3.00, $4.00, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $200, $500, $1,000, $20,000 and CANDY CANE 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:
### E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining 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 $2.00, $3.00, $4.00, $5.00, $10.00, $50.00 (BLACK) or $100 (BLACK).

### G. Mid-Tier Prize - A prize of $40.00, $50.00, $100, $200 or $500.

### H. High-Tier Prize - A prize of $1,000 or $20,000.

### I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

### J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1371), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1371-0000001-001.

### K. Pack - A pack of "HOLIDAY GOLD" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

### L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

### M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOLIDAY GOLD" Instant Game No. 1371 ticket.

---

**Figure 1: GAME NO. 1371 - 1.2D**

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2.00 (BLACK)</td>
<td>TWO$</td>
</tr>
<tr>
<td>$3.00 (BLACK)</td>
<td>THREE$</td>
</tr>
<tr>
<td>$4.00 (BLACK)</td>
<td>FOUR$</td>
</tr>
<tr>
<td>$5.00 (BLACK)</td>
<td>FIVE$</td>
</tr>
<tr>
<td>$10.00 (BLACK)</td>
<td>TEN$</td>
</tr>
<tr>
<td>$15.00 (BLACK)</td>
<td>FIFTN</td>
</tr>
<tr>
<td>$20.00 (BLACK)</td>
<td>TWENTY</td>
</tr>
<tr>
<td>$40.00 (BLACK)</td>
<td>FORTY</td>
</tr>
<tr>
<td>$50.00 (BLACK)</td>
<td>FIFTY</td>
</tr>
<tr>
<td>$100 (BLACK)</td>
<td>ONE HUND</td>
</tr>
<tr>
<td>$200 (BLACK)</td>
<td>TWO HUND</td>
</tr>
<tr>
<td>$500 (BLACK)</td>
<td>FIV HUND</td>
</tr>
<tr>
<td>$1,000 (BLACK)</td>
<td>ONE THOU</td>
</tr>
<tr>
<td>$20,000 (BLACK)</td>
<td>20 THOU</td>
</tr>
<tr>
<td>$2.00 (RED)</td>
<td>TWO$</td>
</tr>
<tr>
<td>$3.00 (RED)</td>
<td>THREE$</td>
</tr>
<tr>
<td>$4.00 (RED)</td>
<td>FOUR$</td>
</tr>
<tr>
<td>$5.00 (RED)</td>
<td>FIVE$</td>
</tr>
<tr>
<td>$10.00 (RED)</td>
<td>TEN$</td>
</tr>
<tr>
<td>$15.00 (RED)</td>
<td>FIFTN</td>
</tr>
<tr>
<td>$20.00 (RED)</td>
<td>TWENTY</td>
</tr>
<tr>
<td>$40.00 (RED)</td>
<td>FORTY</td>
</tr>
<tr>
<td>$50.00 (RED)</td>
<td>FIFTY</td>
</tr>
<tr>
<td>$100 (RED)</td>
<td>ONE HUND</td>
</tr>
<tr>
<td>$200 (RED)</td>
<td>TWO HUND</td>
</tr>
<tr>
<td>$500 (RED)</td>
<td>FIV HUND</td>
</tr>
<tr>
<td>$1,000 (RED)</td>
<td>ONE THOU</td>
</tr>
<tr>
<td>$20,000 (RED)</td>
<td>20 THOU</td>
</tr>
<tr>
<td>CANDY CANE SYMBOL (RED)</td>
<td>WINALL</td>
</tr>
</tbody>
</table>
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 "HOLIDAY GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) play symbols. The player must scratch the play area. If a player reveals three identical PRIZE amounts, the player wins that amount. If a player reveals a RED "candy cane" play symbol, the player WINS ALL PRIZES INSTANTLY! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.
A. To be a valid Instant Game ticket, all of the following requirements must be met:
1. Exactly 9 (nine) 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 9 (nine) 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 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.
B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery’s Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director’s discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director’s discretion.

2.2 Programmed Game Parameters.
A. Consecutive non-winning tickets will not have identical play data, spot for spot.
B. No four or more identical play symbols on a ticket.
C. No three or more pairs on a ticket with the exception of tickets winning with the "CANDY CANE" (win all) play symbol.
D. Only 1 set of 3 identical play symbols on a ticket.
E. Every ticket will have a minimum of two and maximum of six red play symbols.
F. The red "CANDY CANE" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.
G. Three identical play symbols on a ticket is a win regardless of color.
H. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.
A. To claim a "HOLIDAY GOLD" Instant Game prize of $2.00, $3.00, $4.00, $5.00, $10.00, $15.00, $20.00, $40.00, $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 $40.00, $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 Sections 2.3.B and 2.3.C of these Game Procedures.
B. To claim a "HOLIDAY GOLD" Instant Game prize of $1,000, or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery’s Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated.
winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY GOLD" 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 of Public Accounts under Subtitle G, Chapter 403, 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 on 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 "HOLIDAY GOLD" 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 "HOLIDAY GOLD" 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 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 7,080,000 tickets in the Instant Game No. 1371. The approximate number and value of prizes in the game are as follows:
A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 1371 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant ticket 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. 1371, 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-201103754
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2011

♦ ♦ ♦ ♦

Instant Game Number 1389 "Find the 9's"

1.0 Name and Style of Game.

Figure 2: GAME NO. 1371 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2</td>
<td>566,400</td>
<td>12.50</td>
</tr>
<tr>
<td>$3</td>
<td>623,040</td>
<td>11.36</td>
</tr>
<tr>
<td>$4</td>
<td>226,560</td>
<td>31.25</td>
</tr>
<tr>
<td>$5</td>
<td>113,280</td>
<td>62.50</td>
</tr>
<tr>
<td>$10</td>
<td>14,160</td>
<td>500.00</td>
</tr>
<tr>
<td>$15</td>
<td>28,320</td>
<td>250.00</td>
</tr>
<tr>
<td>$20</td>
<td>56,640</td>
<td>125.00</td>
</tr>
<tr>
<td>$40</td>
<td>19,175</td>
<td>369.23</td>
</tr>
<tr>
<td>$50</td>
<td>18,290</td>
<td>387.10</td>
</tr>
<tr>
<td>$100</td>
<td>6,195</td>
<td>1,142.86</td>
</tr>
<tr>
<td>$200</td>
<td>1,180</td>
<td>6,000.00</td>
</tr>
<tr>
<td>$500</td>
<td>590</td>
<td>12,000.00</td>
</tr>
<tr>
<td>$1,000</td>
<td>59</td>
<td>120,000.00</td>
</tr>
<tr>
<td>$20,000</td>
<td>7</td>
<td>1,011,428.57</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.23. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The name of Instant Game No. 1389 is "FIND THE 9'S." The play style is "match 3 of 6 with auto win."

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1389 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1389.
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 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: 9, $1.00, $2.00, $3.00, $49.00 and $199.

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:

IN ADDITION  September 23, 2011  36 TexReg 6329
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining 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: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $9.00 or $19.00.

G. Mid-Tier Prize - A prize of $49.00, $99.00 or $199.

H. High-Tier Prize - A prize of $3,000.

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 (1389), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1389-0000001-001.

K. Pack - A pack of "FIND THE 9’S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

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 "FIND THE 9’S" Instant Game No. 1389 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 "FIND THE 9’S" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) play symbols. If the player reveals 3 matching amounts in the play area, the player wins that amount. If the player reveals any "9" play symbol in the play area, the player wins the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in its entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery’s Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at

---

**Figure 1: GAME NO. 1389 - 1.2D**

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>NINE</td>
</tr>
<tr>
<td>$1.00</td>
<td>ONE$</td>
</tr>
<tr>
<td>$2.00</td>
<td>TWO$</td>
</tr>
<tr>
<td>$3.00</td>
<td>THREE$</td>
</tr>
<tr>
<td>$49.00</td>
<td>FRYMIN</td>
</tr>
<tr>
<td>$199</td>
<td>ONNYNN</td>
</tr>
</tbody>
</table>
the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery’s Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director’s discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director’s discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain two sets of three identical prize amounts.

C. No ticket will contain 4 or more identical prize amounts.

D. No ticket will contain more than four "9" play symbols.

E. No ticket will contain one or more "9" symbols and three identical prize symbols.

F. The "9" play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. Tickets can only win once and will win only the highest amount shown as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of $1.00, $2.00, $3.00, $9.00, $19.00, $49.00, $99.00 or $199, 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 $49.00, $99.00 or $199 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 forward 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 Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of $3,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery’s Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate in-

come 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 "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The 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 delinquency is reported to the Comptroller under Texas 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 under $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor’s family or the minor’s guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor’s family or the minor’s guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §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 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 31,200,000 tickets in the Instant Game No. 1389. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 1389 - 4.0**

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1</td>
<td>4,368,000</td>
<td>7.14</td>
</tr>
<tr>
<td>$2</td>
<td>2,704,000</td>
<td>11.54</td>
</tr>
<tr>
<td>$3</td>
<td>832,000</td>
<td>37.50</td>
</tr>
<tr>
<td>$9</td>
<td>312,000</td>
<td>100.00</td>
</tr>
<tr>
<td>$19</td>
<td>70,590</td>
<td>441.99</td>
</tr>
<tr>
<td>$49</td>
<td>15,600</td>
<td>2,000.00</td>
</tr>
<tr>
<td>$99</td>
<td>3,900</td>
<td>8,000.00</td>
</tr>
<tr>
<td>$199</td>
<td>1,950</td>
<td>16,000.00</td>
</tr>
<tr>
<td>$3,000</td>
<td>260</td>
<td>120,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1389 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 ticket 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. 1389, 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-201103756
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2011

North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the March 25, 2011, issue of the Texas Register (36 TexReg 2046). The selected consultant will perform technical and professional work for the City of Garland Forest Jupiter Transit Oriented Redevelopment Plan.

The consultant selected for this project is The Catalyst Group, 25 Highland Park Village, Suite 100-280, Dallas, Texas 75205. The amount of the contract is not to exceed $150,000.

TRD-201103691
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 9, 2011
Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 12, 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 Cebridge Acquisition, L.P. dba Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority; to add the city limits of City of San Angelo, Texas. Project Number 39757.

The requested amendment is to expand the service area footprint to include San Angelo, 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 39757.

TRD-201103779
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2011

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 12, 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 Comcast of Houston, LLC for State-Issued Certificate of Franchise Authority; to add areas Hilshire Village, Meadows Place, Texas, Project Number 39758.

The requested amendment is to expand the service area footprint to include Hilshire Village and Meadows Place, 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 39758.

TRD-201103780
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2011

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on September 9, 2011, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of US Cable of Coastal-Texas, L.P. for a State-Issued Certificate of Franchise Authority, Project Number 39752.

The requested CFA is for the service area of Fort Stockton, Iraan, and Seminole, Texas, including any future annexations, and unincorporated areas in Brewster County, Texas, excluding federal properties, in its service area footprint.

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 39752.

TRD-201103747
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2011

Notice of Amended Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 17, 2011, and an amended application on May 9, 2011, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of TerraCom, Inc. db/a TerraCom Wireless for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 39261.

The Application: The company is requesting ETC designation in order to be eligible to receive federal universal service funding to assist it in providing universal service in Texas. The company is seeking only low income support, and is not requesting high cost support. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. TerraCom Wireless seeks ETC designation throughout the non-rural GTE-SW db/a Verizon SW Inc.-TX, GTE-SW db/a Verizon SW Inc.-TX (Contel) and Southwestern Bell db/a AT&T Texas service territories. The company requested an effective date no earlier than 30 days after publication in the Texas Register, which in this instance is October 24, 2011. The company holds Service Provider Certificate of Operating Authority No. 60758.

Persons who wish to comment on this application should notify the Public Utility Commission by October 3, 2011. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission’s Customer Protection Division 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 39261.

TRD-201103744
Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 8, 2011, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of DIECA Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 39750.

Applicant intends to provide data, facilities-based, and resold telecommunications services.

Applicant’s requested SPCOA geographic area comprises the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 30, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 39750.

TRD-201103746
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2011

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on September 6, 2011, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. for a Minor Service Area Boundary Change between its Hancock Exchange and the Verizon Southwest Blanco Exchange. Docket Number 39744.

The Application: The minor boundary amendment will provide a realignment to allow for more efficient facilities design for both Guadalupe Valley Telephone Cooperative, Inc. and Verizon Southwest, and will allow future customers in the Mystic Shores Unit #20 Subdivision to be served by a single dominant certificated telecommunications utility.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 3, 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 39744.

TRD-201103703
electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of NA Power, LLC for Retail Electric Provider Certification, Pursuant to Subst. R. §25.105, Docket Number 39747 before the Public Utility Commission of Texas.

Applicant’s requested service area by geography includes the entire state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 30, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 39747.

TRD-201103706
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2011

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 12, 2011, for an amendment to certificated service area for a service area exception within Atascosa County, Texas.

Docket Style and Number: Application of Medina Electric Cooperative, Inc. for an Amendment to its Certificate of Convenience and Necessity for a Service Area Exception Docket Number 39762.

The Application: Medina Electric Cooperative, Inc. (MEC) filed an application for a service area exception to allow MEC to provide service to a specific customer located within the certificated service area of CPS Energy. CPS Energy has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 7, 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) at (800) 735-2989. All comments should reference Docket Number 39762.

TRD-201103773
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2011

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 9, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Hays County, Texas.


The Application: North Plains Electric Cooperative, Inc. (NPEC) filed an application to amend a certificate of convenience and necessity for a proposed 69-kV transmission line. NPEC proposes to construct approximately 2 miles of new 69-kV overhead transmission line and a new substation east of Spearman in Hays County, Texas. The proposed project is designated as the Williams 69-kV Tap Transmission Line Project. The estimated cost of the project, including transmission line and substation costs, is approximately $2,200,000. The proposed project is presented with two alternate routes. NPEC has designated a preferred route. However, the commission may approve any route presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is October 24, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 39699.

TRD-201103745

The Application: Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas), pursuant to P.U.C. Procedural Rule §22.5(b), requests that the commission waive for good cause the requirements of P.U.C. Substantive Rule §26.130(c)(1)(C)(i).

AT&T Texas requests a good cause exception that would allow AT&T Texas to verify a customer’s identity for purposes of changing his/her telecommunication service, using the customer’s month and date of birth rather than month and year. AT&T Texas claims that Texas alone requires that the month and year be obtained from the customer. In order to obtain consistency across all AT&T Texas states, AT&T Texas is requesting a good cause exception from the requirement in P.U.C. Substantive Rule §26.130(c)(1)(C)(i) that would allow AT&T Texas to verify using the customer’s month and date of birth rather than month and year.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 39759.

TRD-201103706
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2011

Notice of Application for Waiver from Requirements in P.U.C. Substantive Rule §26.130(c)(1)(C)(i)

Notice is given to the public of an application filed on September 12, 2011, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.130(c)(1)(C)(i).


TRD-201103745

IN ADDITION  September 23, 2011  36 TexReg 6335
Texas Department of Transportation
Cancellation of Notice of Intent - Loop 375 Border Highway West, El Paso, Texas

The Texas Department of Transportation (department), in cooperation with the Federal Highway Administration (FHWA), is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare a federal-level environmental impact statement (EIS) for Loop 375 Border Highway West Extension project is being rescinded. In September 2007, the department and FHWA announced their intent to prepare an EIS pursuant to 43 Texas Administrative Code (TAC) §2.12(d) for the proposed Loop 375 César Chávez Highway (Border Highway West Extension) in El Paso, Texas, to include the Texas, New Mexico, and Ciudad Juárez, Chihuahua México border region. The proposed Border Highway West Extension project limits extended approximately 13.8 miles to provide a continuous route from Interstate 10 (I-10) east of State Highway (SH) 20 (Mesa Street) to Sunland Park Drive and continued on Loop 375 to end at United States Highway (US) 54. The proposed project was part of an alternate route to provide congestion relief for I-10, an east-west facility north of the project. The Loop 375 Border Highway West Extension Project was originally included in the Gateway 2030 Metropolitan Transportation Plan (MTP); and, is currently included in the current Mission 2035 MTP, a transportation program adopted by the El Paso Metropolitan Planning Organization (MPO) in August of 2010 and approved for air conformity on January 28, 2011.

The EIS was in the preliminary stages of development. Two scoping meetings were held for cooperating and participating agencies on October 23, 2007 and October 30, 2007 at the El Paso International Airport Board Room, 6701 Convair Road, El Paso, Texas. In addition, two public scoping meetings were held on the same dates at Hilos de Plata Senior Center and the Westside Regional Command Center, El Paso, Texas.

The department has decided to issue this cancellation of the federal-level NOI because of a change to utilize state funding. The department intends to publish a new NOI in the future. The project under the new NOI will be processed as a state-funded project and will follow 43 TAC Chapter 2. Appropriate project scoping, meetings, and environmental documents will be completed in the future as the project proceeds with the new scope and limits.

Agency Contact: Ray Dovalina, P.E., Deputy District Engineer, El Paso District, Texas Department of Transportation, 13301 Gateway Boulevard West, El Paso, Texas 79928-5410; Telephone: (915) 790-4200.

TRD-201103769
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 13, 2011

Notice of Intent - Loop 375 Border Highway West Extension Project, El Paso County, Texas

Pursuant to 43 Texas Administrative Code §2.5(e)(2), the Texas Department of Transportation is issuing this notice to advise the public that a state-level Environmental Impact Statement (EIS) will be prepared for the proposed transportation project, Loop 375 Border Highway West Extension Project in El Paso, Texas. The proposed project limits would be Park Street near downtown El Paso, to Racetrack Drive at its intersection with Doniphan Road, running approximately eight miles. The project would provide a continuation of Loop 375, starting

Texas State Technical College System
Request for Proposals for Outside Counsel

Texas State Technical College (TSTC), an institution of higher education and an agency of the State of Texas, is seeking proposals from attorneys licensed in Delaware who practice bankruptcy law. TSTC is the owner of property which is currently leased to a bankruptcy petitioner who has filed Chapter 11 Bankruptcy in Delaware. TSTC is therefore seeking counsel to protect the interests of TSTC in the bankruptcy proceedings in that jurisdiction. For further information, please see the Request for Proposal (RFP) SYS 1200 issued September 12, 2011 and posted on the Texas Marketplace at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=96818.

TRD-201103735
Susan Shafar
Associate General Counsel
Texas State Technical College System
Filed: September 12, 2011

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2011

Notice of Application to Defer Expenses

Notice is given to the public of a petition for authority to defer expenses related to a proposed transition to membership in the Midwest Independent Transmission System Operator Regional Transmission Organization filed with the Public Utility Commission of Texas on September 2, 2011.

Docket Style and Number: Application of Entergy Texas, Inc. for Authority to Defer Expenses Related to its Proposed Transition to Membership in the Midwest Independent Transmission System Operator, Docket Number 39741.

The Application: Entergy Texas, Inc. (ETI) filed an application with the Public Utility Commission of Texas (commission) requesting authority to defer expenses related to its proposed transition to membership in the Midwest Independent Transmission System Operator (MISO) Regional Transmission Organization (RTO). ETI requests an accounting order authorizing the Company to defer for future review all O&M expenses incurred in the course of transitioning to the MISO RTO. ETI requests that the commission issue an accounting order by the end of 2011, if possible.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission’s Customer Protection Division at (512) 936-7130 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. A deadline to intervene or comment will be established. All correspondence should refer to Docket Number 39741.

TRD-201103702
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2011

Texas State Technical College System
Request for Proposals for Outside Counsel

Texas State Technical College (TSTC), an institution of higher education and an agency of the State of Texas, is seeking proposals from attorneys licensed in Delaware who practice bankruptcy law. TSTC is the owner of property which is currently leased to a bankruptcy petitioner who has filed Chapter 11 Bankruptcy in Delaware. TSTC is therefore seeking counsel to protect the interests of TSTC in the bankruptcy proceedings in that jurisdiction. For further information, please see the Request for Proposal (RFP) SYS 1200 issued September 12, 2011 and posted on the Texas Marketplace at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=96818.

TRD-201103735
Susan Shafar
Associate General Counsel
Texas State Technical College System
Filed: September 12, 2011

36 TexReg 6336   September 23, 2011   Texas Register
south of downtown and heading northwest. Currently traffic crossing the downtown area must take a circuitous route on local streets. Traffic starting at Park Street must take a four lane boulevard to US 62, and take US 85 from US 62 to New Mexico Route 273. The proposed project is currently included in the Mission 2035 Metropolitan Transportation Plan as a new six-lane partially controlled access facility that may follow portions of existing Loop 375 or US 85. Due to the changes in project funding, the project will proceed as a state-level EIS. This project description is subject to revision based on agency and public input as well as the completion of the Alternatives Analysis process.

The project would add capacity and upgrade the existing facility to a controlled access facility by adding two to four through-lanes (one to two lanes in each direction).

The EIS will evaluate potential impacts from construction and operation of the project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources. Unique and potential significant impacts could include aesthetic and visual resources, noise, water quality, and cultural resources.

The department will consider several alternatives intended to satisfy the identified need and purpose. The alternatives will include the no-build alternative, Transportation System Management/Transportation Demand Management, mass transit, and roadway build alternatives. The roadway build alternatives may include limited access and non-limited access (arterial) designs, and toll and non-toll lanes. There are international crossings located within the project limits and the department will study the need to elevate or depress portions of the proposed facility.

The project may require the following approvals by the federal government: Section 401/404 (Clean Water Act) and Section 7 (Endangered Species Act).

A project coordination plan will be provided to facilitate and document the lead agencies’ structured interaction with the public and other agencies and to inform the public and other agencies of how the coordination will be accomplished. The project coordination plan will promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project need and purpose, schedule, level of detail for alternatives analysis, methodologies to be used in the environmental analysis, and the proposed process for coordination and communication.

The project coordination plan is designed to be part of a flexible and adaptable process. The plan will be available for public review, inputs, and comments at public meetings, including scoping meetings and hearings held throughout the environmental process, and upon request at the department’s El Paso District Office.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the need and purpose for the proposed project, to assist in determining the range of alternatives for consideration in the draft EIS, and to comment on methodologies to evaluate alternatives. The department will publish notices that scoping meetings will be held. The department currently intends to hold scoping meetings in the fall of 2011. The notices will be published in newspapers of general circulation in the project area at least 30 days prior to the meetings, and again approximately 10 days prior to the meetings.

Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. The department will also send correspondence to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. The department invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the department at the address set forth below.

A proposed schedule for completion of the environmental review process is not available.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Ray Dovalina, P.E., Deputy District Engineer, El Paso District, Texas Department of Transportation, 13301 Gateway Boulevard West, El Paso, Texas 79928-5410; telephone (915) 790-4200.

TRD-201103770
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 13, 2011

Texas Water Development Board
Applications for September 2011

Pursuant to Texas Water Code §6.195, the Texas Water Development Board (TWDB) provides notice of the following applications:

Project ID #73604, a request from the City of Caddo Mills, P.O. Box 490, Caddo Mills, Texas 75135, received December 28, 2010, for a loan in the amount of $4,430,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #62507, a request from the Town of Anthony, P.O. Box 1269, Anthony, Texas 79821, received December 29, 2010, for financial assistance in the amount of $2,540,000 consisting of: (a) a loan in the amount of $762,000; and (b) $1,778,000 loan forgiveness, from the Drinking Water State Revolving Fund-Disadvantaged Community program to finance water system improvements utilizing the pre-design commitment option.

Project ID #10411, a request from the El Paso Water Utilities Public Service Board, P.O. Box 511, El Paso, Texas 79961-0001, received February 10, 2011, for a grant in the amount of $82,000 from the Economically Distressed Areas Program for the planning, acquisition and design costs to provide first time water service in the Canutillo area - La Mesa, Vinton, and Seventh Streets, utilizing the pre-design funding option.

Project ID #10428, a request from the El Paso Water Utilities Public Service Board, P.O. Box 511, El Paso, Texas 79961-0001, received March 2011, for a grant in the amount of $90,000 from the Economically Distressed Areas Program for the planning costs to provide first time water service in the Canutillo area - Georgia and Norma Streets, utilizing the pre-design funding option.
Project ID #10373, a request from the City of Portland, 1900 Billy G Webb Drive, Portland, Texas 78374, received January 2011, for financial assistance in the amount of $2,493,000, consisting of: (a) a $193,000 loan; and (b) a $2,300,000 grant, from the Economically Distressed Areas Program for the construction costs to provide first time wastewater service to the Doyle Subdivision, utilizing the pre-design funding option.

Project ID #21708, a request from the Montgomery County Municipal Utility District No. 8, 1001 McKinney Street, Suite 1000, Houston, Texas 77002-6424, received June 22, 2011, for: (a) a loan in the amount of $2,725,000 from the Texas Water Development Fund to finance water system improvements, utilizing the pre-design funding option; and (b) rescind TWDB Resolution 10-131 which approved a $645,000 loan from the Water Infrastructure Fund.

Project ID #21708, a request from the Montgomery County Municipal Utility District No. 9, 1001 McKinney Street, Suite 2500, Houston, Texas 77002-6424, received June 23, 2011 for: (a) a loan in the amount of $2,725,000 from the Texas Water Development Fund to finance water system improvements, utilizing the pre-design funding option; and (b) rescind TWDB Resolution 10-132 which approved a $645,000 loan from the Water Infrastructure Fund.

Project ID #73606, a request from the City of Houston, 901 Bagby, Houston, Texas 77002, received April 6, 2011, for a loan in the amount of $49,900,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #62510, a request from the City of Burnet, 1001 West Buchanan, Suite 4, Burnet, Texas 78611, received July 5, 2011, for a loan in the amount of $1,375,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program to finance water system improvements, utilizing the pre-design funding option.

TRD-201103771

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 13, 2011

Notice of Public Hearing

The Texas Water Development Board (Board) will conduct a public hearing beginning at 6:00 p.m. on October 17, 2011, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 to receive public comments on the draft 2012 State Water Plan in accordance with 31 Texas Administrative Code §358.3(a). The Board will consider adopting the draft 2012 State Water Plan at its regular Board meeting on November 17, 2011, at the same location.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the State Water Plan. In addition, persons may provide written comments on or before October 25, 2011, to Kathleen B. Ligon, Water Resources Planning and Information, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711 or by e-mail to kathleen.ligon@twdb.state.tx.us.

Copies of the draft 2012 State Water Plan will be available for inspection in Room 510C of the Stephen F. Austin Building from Water Resources Planning and Information, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0853. A copy will also be available on the Board’s website at http://www.twdb.state.tx.us.

TRD-201103688

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 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.

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)