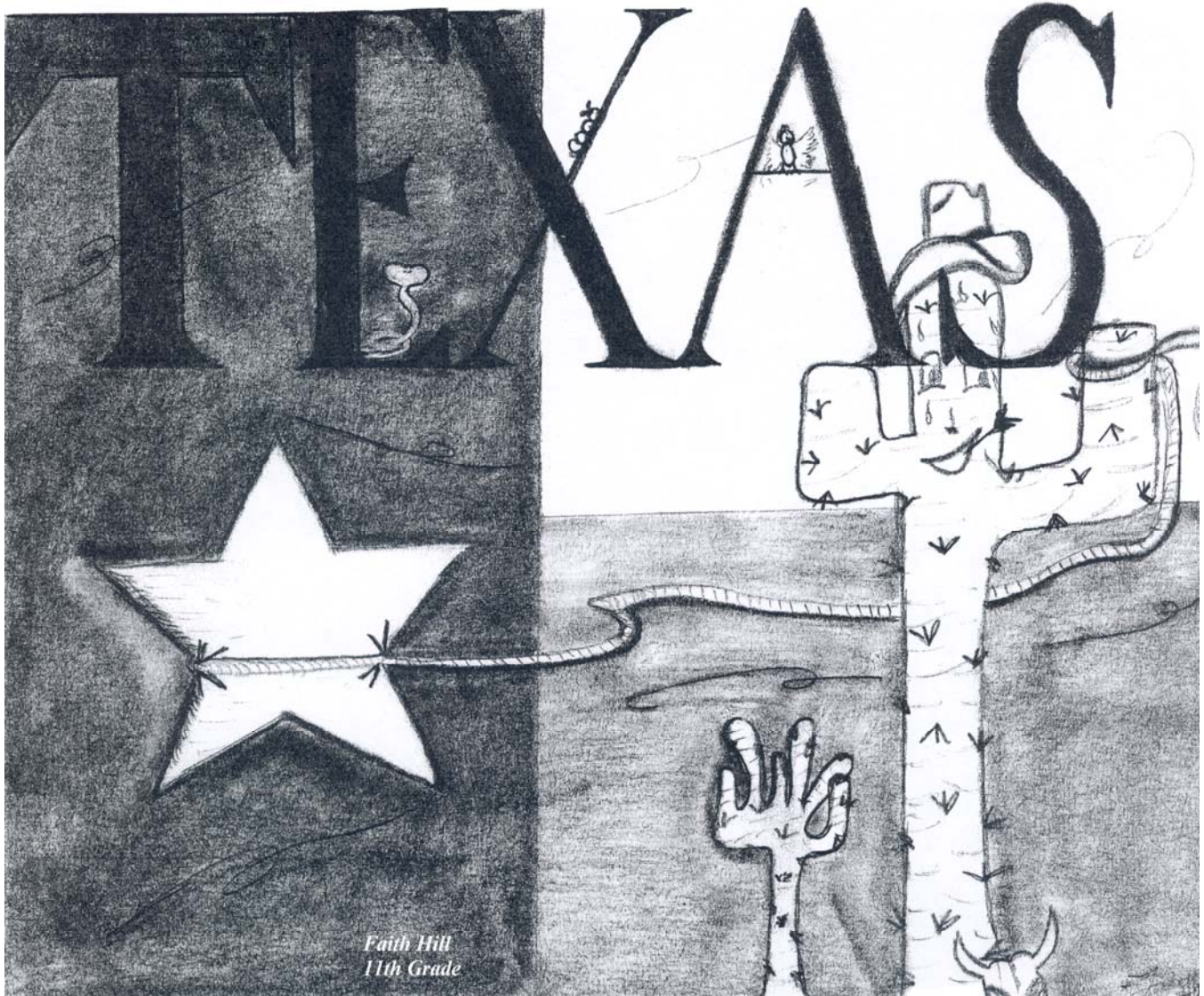

TEXAS REGISTER

Volume 36 Number 49

December 9, 2011

Pages 8273 - 8458



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.

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

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

TEXAS REGISTER

a section of the
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IN THIS ISSUE

GOVERNOR

Appointments.....	8279
Proclamation 41-3286.....	8280
Proclamation 41-3287.....	8280

ATTORNEY GENERAL

Requests for Opinions.....	8281
Requests for Opinions.....	8281
Opinions.....	8281

EMERGENCY RULES

TEXAS EDUCATION AGENCY

BUDGETING, ACCOUNTING, AND AUDITING

19 TAC §109.2001.....	8283
-----------------------	------

PROPOSED RULES

TEXAS DEPARTMENT OF LICENSING AND REGULATION

SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§77.10, 77.20 - 77.23, 77.40 - 77.42, 77.44, 77.70, 77.71, 77.80, 77.91.....	8285
--	------

COSMETOLOGISTS

16 TAC §§83.10, 83.20, 83.21, 83.23, 83.25, 83.26, 83.31, 83.51, 83.70 - 83.72, 83.74, 83.80, 83.100, 83.102, 83.104 - 83.106, 83.112, 83.115, 83.120.....	8295
16 TAC §83.75.....	8309

IDENTITY RECOVERY SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§90.10, 90.20, 90.21, 90.23, 90.24, 90.40 - 90.42, 90.70, 90.71.....	8309
--	------

PROPERTY TAX PROFESSIONALS

16 TAC §§94.24 - 94.28, 94.80.....	8316
------------------------------------	------

TEXAS EDUCATION AGENCY

BUDGETING, ACCOUNTING, AND AUDITING

19 TAC §109.2001.....	8317
-----------------------	------

TEXAS OPTOMETRY BOARD

GENERAL RULES

22 TAC §273.6.....	8319
--------------------	------

TEXAS STATE BOARD OF PHARMACY

LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.2 - 283.4, 283.7 - 283.12.....	8320
---	------

PHARMACIES

22 TAC §291.34.....	8326
---------------------	------

PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.10.....	8328
---------------------	------

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

PROFESSIONAL COUNSELORS

22 TAC §§681.2, 681.14, 681.15.....	8330
22 TAC §681.41, §681.46.....	8331
22 TAC §681.72.....	8332
22 TAC §681.81.....	8332
22 TAC §681.91, §681.93.....	8333
22 TAC §681.112.....	8333
22 TAC §681.125.....	8334
22 TAC §681.172.....	8334

STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

22 TAC §741.1.....	8336
22 TAC §741.13.....	8336
22 TAC §741.44.....	8337
22 TAC §§741.61, 741.62, 741.64, 741.66.....	8337
22 TAC §741.81, §741.86.....	8338
22 TAC §741.121.....	8339
22 TAC §741.141, §741.142.....	8339
22 TAC §741.162, §741.163.....	8340
22 TAC §§741.191, 741.192, 741.203, 741.204.....	8340

TEXAS WATER DEVELOPMENT BOARD

STATE WATER PLANNING GUIDELINES

31 TAC §358.6.....	8341
--------------------	------

FINANCIAL ASSISTANCE PROGRAMS

31 TAC §363.12.....	8343
---------------------	------

DRINKING WATER STATE REVOLVING FUND

31 TAC §371.34.....	8345
---------------------	------

CLEAN WATER STATE REVOLVING FUND

31 TAC §375.43.....	8346
---------------------	------

ADOPTED RULES

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ADMINISTRATION

10 TAC §1.24.....	8349
-------------------	------

10 TAC §§1.31 - 1.37	8352	22 TAC §190.8.....	8379
10 TAC §§1.31 - 1.37	8353	22 TAC §190.14.....	8379
COMMUNITY AFFAIRS PROGRAMS		TEXAS OPTOMETRY BOARD	
10 TAC §5.801.....	8368	EXAMINATIONS	
TEXAS RACING COMMISSION		22 TAC §271.3.....	8383
DEFINITIONS		TEXAS DEPARTMENT OF PUBLIC SAFETY	
16 TAC §301.1.....	8369	DRIVER LICENSE RULES	
RACETRACK LICENSES AND OPERATIONS		37 TAC §15.24.....	8383
16 TAC §309.8.....	8370	37 TAC §15.171.....	8384
16 TAC §309.8.....	8370	37 TAC §§15.181 - 15.185	8384
16 TAC §309.129.....	8371	CRIME RECORDS	
OTHER LICENSES		37 TAC §27.31.....	8387
16 TAC §311.3.....	8371	TEXAS VETERANS COMMISSION	
VETERINARY PRACTICES AND DRUG TESTING		ADMINISTRATION GENERAL PROVISIONS	
16 TAC §319.3.....	8371	40 TAC §452.2.....	8387
16 TAC §319.335, §319.336.....	8372	STATUTORY ADVISORY COMMITTEES	
PARI-MUTUEL WAGERING		40 TAC §§458.1 - 458.3	8388
16 TAC §321.36.....	8372	FUND FOR VETERANS' ASSISTANCE PROGRAM	
16 TAC §321.407.....	8372	40 TAC §§460.1, 460.2, 460.5, 460.8 - 460.10, 460.12, 460.16 ..	8389
TEXAS EDUCATION AGENCY		TRANSFERRED RULES	
ADAPTATIONS FOR SPECIAL POPULATIONS		Council on Sex Offender Treatment	8391
19 TAC §§89.41 - 89.48	8374	Office of Violent Sex Offender Management	8391
19 TAC §89.48.....	8374	RULE REVIEW	
PLANNING AND ACCOUNTABILITY		Proposed Rule Reviews	
19 TAC §§97.1 - 97.4	8374	Office of Consumer Credit Commissioner	8393
TEXAS BOARD OF PROFESSIONAL ENGINEERS		Texas Department of Insurance, Division of Workers' Compensation	8393
ORGANIZATION AND ADMINISTRATION		Texas State Board of Pharmacy	8393
22 TAC §131.15.....	8375	Adopted Rule Reviews	
COMPLIANCE AND PROFESSIONALISM		Comptroller of Public Accounts	8394
22 TAC §137.19.....	8375	Texas Department of Insurance, Division of Workers' Compensation	8394
22 TAC §137.51.....	8376	Texas Medical Board	8394
ENFORCEMENT		Texas Youth Commission	8395
22 TAC §139.35.....	8377	TABLES AND GRAPHICS	
TEXAS MEDICAL BOARD		8397
POSTGRADUATE TRAINING PERMITS		IN ADDITION	
22 TAC §171.6.....	8377	Cancer Prevention and Research Institute of Texas	
TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS		Request for Applications P-12-CPMG2 Cancer Prevention Microgrants.....	8407
22 TAC §180.4.....	8378		
DISCIPLINARY GUIDELINES			

Request for Applications P-12-EBP2 Evidence-Based Cancer Prevention Services	8407	Company Licensing	8424
Request for Applications P-12-PPE2 Health Behavior Change Through Public and Professional Education and Training	8407	Third Party Administrator Application	8424
Office of Consumer Credit Commissioner		North Central Texas Council of Governments	
Notice of Rate Ceilings	8407	Notice of Consultant Contract Award	8424
Notice of Rate Ceilings	8408	Notice of Consultant Contract Award	8424
Employees Retirement System of Texas		Notice of Contract Award	8425
Request for Application	8408	Texas Public Finance Authority	
Request for Application	8409	Executive Director	8425
Texas Board of Professional Engineers		Public Utility Commission of Texas	
Criminal History Policy for Applications	8409	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	8425
Criminal History Policy for Licensees	8410	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	8425
Texas Commission on Environmental Quality		Announcement of Application for State-Issued Certificate of Franchise Authority	8425
Agreed Orders	8411	Notice of Application for Amendment to Service Provider Certificate of Operating Authority	8426
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	8414	Notice of Application to Relinquish a Service Provider Certificate of Operating Authority	8426
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	8416	Teacher Retirement System of Texas	
Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions	8416	Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits	8426
Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment	8417	Texas Department of Transportation	
Notice of Water Quality Applications	8418	Aviation Division - Request for Proposal for Land Acquisition Services	8447
Texas Facilities Commission		Aviation Division - Request for Proposal for Professional Engineering Services	8448
Request for Proposals #303-3-20315	8420	Aviation Division - Request for Proposal for Professional Engineering Services	8449
General Land Office		Aviation Division - Request for Proposal for Professional Engineering Services	8449
Request for Public Comments on the Rollover Pass Determination	8420	Public Notice - Advertising in Texas Department of Transportation Travel Literature and <i>Texas Highways</i> Magazine	8450
Texas Health and Human Services Commission		Public Notice - Aviation	8456
Notice of Award of a Major Consulting Contract	8420	Request for Proposals - Outside Counsel	8456
Department of State Health Services		Request for Qualifications	8457
Licensing Actions for Radioactive Materials	8421		
Texas Department of Insurance			
Company Licensing	8424		

Open Meetings

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

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

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

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

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

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

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

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

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

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

THE GOVERNOR

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

Appointments

Appointments for November 7, 2011

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2013, Carol Bush of Waxahachie.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2013, Michael F. Meade of Simonton.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2013, Mary Lou Mendoza of San Antonio.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2013, Scott W. Fisher of Bedford. Mr. Fisher will serve as presiding officer for a term at the pleasure of the Governor.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2015, Laura Parker of San Antonio.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2015, James "Jimmy" Smith of Midland.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2015, Calvin W. Stephens of Dallas.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2015, Melissa Weiss of Bellville.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2017, John A. Brieden, III of Brenham.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2017, Joseph D. Brown of Sherman.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2017, Jane A. King of Canyon.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2017, Robert "Rob" Kyker of Richardson.

Pursuant to SB 653, 82nd Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2017, Rene L. Olvera of San Antonio.

Appointed to the Permian Basin Regional Review for a term at the pleasure of the Governor, Randy Neal of Kermit (replacing Tommy Smith of Kermit).

Appointed to the South Plains Regional Review for a term at the pleasure of the Governor, James B. Meador of Matador (replacing Larry Sprowls of Levelland).

Appointed to the West Central Texas Regional Review for a term at the pleasure of the Governor, Leo C. Smith, Jr. of Bangs (replacing Ken Lane of Haskell).

Designating Martin Nash as presiding officer of the Deep East Texas Regional Review for a term at the pleasure of the Governor. Commissioner Nash is replacing Mayor Jimmie Ruth Cooley of Woodville as presiding officer.

Appointed to the Deep East Texas Regional Review for a term at the pleasure of the Governor, Jim Elder of Nacogdoches (replacing Jimmie Ruth Cooley of Woodville).

Appointed to the ARK-TEX Regional Review for a term at the pleasure of the Governor, Chris Brown of Sulphur Springs (replacing Cletis Millsap of Sulphur Springs).

Appointed to the ARK-TEX Regional Review for a term at the pleasure of the Governor, Lynda S. Munkres of Omaha (replacing J.C. Jennings of Daingerfield).

Appointed to the Concho Valley Regional Review for a term at the pleasure of the Governor, Andrew Murr of Junction (replacing John Jones of Ozona).

Appointed to the Concho Valley Regional Review for a term at the pleasure of the Governor, Danny Neal of Brady (replacing Randy Young of Bastrop).

Appointed to the Concho Valley Regional Review for a term at the pleasure of the Governor, Ralph Sides of Sterling City (replacing Robert Browne of Sterling City).

Appointed to the Nortex Regional Review for a term at the pleasure of the Governor, Sheila M. Birdwell of Bryson (replacing Tom Sessions of Jacksboro).

Appointed to the Nortex Regional Review for a term at the pleasure of the Governor, Daniel Manney of Crowell (replacing Charles Bell of Crowell).

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee for a term to expire January 31, 2013, Walker N. Moody of Houston (replacing Joyce King of Plano who resigned).

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee for a term to expire January 31, 2015, Alejandro G. "Alex" Meade, III of Mission (replacing Phil Wilson of Austin who resigned).

Appointed to the Texas Interagency Council for the Homeless for a term at the pleasure of the Governor, Michael Jay Doyle of North Richland Hills. Mr. Doyle is being reappointed.

Appointments for November 14, 2011

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2015, Kenneth Pelt of Kountze (Commissioner Pelt is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2015, Ray A. Wilkerson of Austin (replacing Danny Perkins of Houston whose term expired).

Appointed to the Upper Neches River Municipal Water Authority Board of Directors for a term to expire February 1, 2017, Milton Phillip Jenkins of Palestine (replacing Robert McKelvey of Palestine whose term expired).

Rick Perry, Governor
TRD-201105263



Proclamation 41-3286

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas House in District No. 14, which consists of part of Brazos County; and

WHEREAS, the results of the special election have been officially declared on this date; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.025(a) of the Texas Election Code requires a special runoff election to be held not earlier than the 20th or later than the 45th day after the date of the canvass of the main election;

WHEREAS, Tex. Elec. Code Ann. §3.003 requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in House District 14 on Tuesday, December 13, 2011, for the purpose of electing a State Representative for House District 14 to serve the remainder of the term.

Early voting by personal appearance shall begin on December 5, 2011, in accordance with Tex. Elec. Code Ann. §85.001(b).

A copy of this order will be mailed immediately to the County Judge in Brazos County and all appropriate writs will be issued and all proper proceedings will be followed, to the end that said election may be held to fill the vacancy in House District 14 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 21st day of November, 2011.

Rick Perry, Governor
TRD-201105264



Proclamation 41-3287

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the City of El Paso has requested that I exercise executive authority to grant an emergency exception to the uniform election date requirements pursuant to Sections 41.001 and 41.0011, Texas Election Code, and to grant a request for a special recall election, pursuant to the city charter; and

WHEREAS, the City of El Paso has certified that the City has approved a petition for a recall election pursuant to the city charter; and

WHEREAS, the next available uniform election date is May 12, 2012, which is now a restricted uniform election date; and

WHEREAS, pursuant to Section 41.001(d), Texas Election Code, the El Paso County Elections Administrator has advised the City that the County will not be able to provide election services for the May 12, 2012 uniform election date; and

WHEREAS, in order to comply with requirements for accessible voting systems mandated by Section 61.012, Texas Election Code, the El Paso City Council would have to purchase or lease accessible voting equipment; and

WHEREAS, the El Paso County Elections Administrator has stated that his office can only provide these services by contract on the non-uniform election date of Saturday, April 14, 2012; and

WHEREAS, the Texas uniform election dates law is intended to serve the interests of voters by allowing consolidation of elections onto a limited number of uniform dates, but the special circumstances as expressed by the City of El Paso and El Paso County suggest that the interests of voters would be better served in this unique case by permitting an earlier election on a non-uniform date; and

WHEREAS, the Governor of Texas is granted the discretion under Section 41.0011, Election Code, to declare an emergency warranting holding a special election before the appropriate uniform election date;

NOW THEREFORE I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Laws of the State of Texas, do hereby declare that the foregoing circumstances constitute an emergency and, accordingly, I grant permission for the City of El Paso to conduct a special election on April 14, 2012, for purposes of the recall election granted pursuant to the City of El Paso's city charter.

I also direct the City of El Paso to seek preclearance from the United States Department of Justice as required by law.

Should the City choose to exercise the City's authority to call an election pursuant to this proclamation, said election may be held on April 14, 2012, in accordance with law.

A copy of this order shall be mailed immediately to the City Council of the City of El Paso.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 21st day of November, 2011.

Rick Perry, Governor
TRD-201105265



THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-1016-GA

Requestor:

The Honorable John Whitmire
Chairman, Committee on Criminal Justice
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a constable who was convicted of a felony but whose conviction was finalized only after he was reelected to a new term automatically vacates his office (RQ-1016-GA)

Briefs requested by December 19, 2011

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

TRD-201105163
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 21, 2011



Requests for Opinions

RQ-1017-GA

Requestor:

The Honorable Jack Roady
Galveston County Criminal District Attorney
600 Fifty Ninth Street, Suite 1001
Galveston, Texas 77551-4137

Re: Whether recreational off-highway and all-terrain vehicles may be lawfully operated on a public beach (RQ-1017-GA)

Briefs requested by December 22, 2011

RQ-1018-GA

Requestor:

The Honorable Anna Laura Cavazos Ramirez

Webb County Attorney

Post Office Box 420268

Laredo, Texas 78042-0268

Re: Authority of a county treasurer with regard to the reconciliation of accounts of elected officials (RQ-1018-GA)

Briefs requested by December 22, 2011

RQ-1019-GA

Requestor:

The Honorable Jerry Patterson
Commissioner
Texas General Land Office
Post Office Box 12873

Austin, Texas 78711-2873

Re: Authority of the Comptroller of Public Accounts to commit the expenditure of funds from the Major Events Trust Fund under particular circumstances (RQ-1019-GA)

Briefs requested by December 22, 2011

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

TRD-201105239

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 29, 2011



Opinions

Opinion No. GA-0893

The Honorable Charlie Geren
Chair, Committee on House Administration
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a city that has adopted civil service rules for its police officers under chapter 143 of the Local Government Code may authorize a reserve police force (RQ-0972-GA)

S U M M A R Y

A city that has adopted chapter 143 of the Texas Local Government Code may create and maintain a reserve police force. A city that has adopted chapter 143 of the Texas Local Government Code may create and maintain a reserve police force.

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

TRD-201105225
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 29, 2011



EMERGENCY RULES

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

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING FINANCIAL EXIGENCY 19 TAC §109.2001

The Texas Education Agency (TEA) adopts on an emergency basis new §109.2001, concerning financial exigency. The new section implements the requirements of the Texas Education Code (TEC), §44.011, as added by Senate Bill (SB) 8, 82nd Texas Legislature, First Called Session, 2011. The TEC, §44.011, requires that the commissioner of education adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district. The TEC, §44.011(f), authorizes the commissioner to take such action in the manner provided by law for emergency rules.

The new section is adopted on an emergency basis to take effect immediately. The TEA finds that the requirements of state law in the TEC, §44.011, as added by SB 8, 82nd Texas Legislature, First Called Session, 2011, require the adoption of the new section on fewer than 30 days notice. The TEC, §44.011, allows the board of trustees of a school district to declare financial exigency for the district at anytime during the school year. The emergency adoption, as provided in the TEC, §44.011(f), will inform school districts of the minimum standards and procedures that must exist for declaration of financial exigency during the 2011-2012 school year. The emergency adoption will make the financial exigency minimum standards and procedures available on an emergency basis beginning November 21, 2011.

The new section is simultaneously being proposed for permanent adoption and can be found in the Proposed Rules section of this issue.

The new section is adopted on an emergency basis under the TEC, §44.011, as added by Senate Bill 8, 82nd Texas Legislature, 2011, which authorizes the commissioner to adopt by rule minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district. The TEC, §44.011(f), authorizes the commissioner to take such action in the manner provided by law for emergency rules.

The new section implements the TEC, §44.011.

§109.2001. Financial Exigency.

(a) Financial exigency means the financial position of a school district as a whole is such that the financial resources of the school district are insufficient to support existing academic programs or the school district is unable to finance the full compensation of staff for the current or succeeding fiscal year.

(b) Financial exigency may be declared by a school district board of trustees under one or more of the following conditions:

(1) a decrease of more than 20% in unassigned General Fund balance per student in weighted average daily attendance over the past two years or a projected reduction of 20% compared to the current year;

(2) a decline in enrollment by more than 10% over the past 5 years;

(3) a reduction of more than 10% in total General Fund total funding per student in weighted average daily attendance or a projected reduction of 10% compared to the current year;

(4) an unforeseen natural disaster requiring significant expenditures for repair or remediation in excess of 15% of the current year General Fund budget;

(5) an unanticipated major expense, including significant repair costs; litigation expenses, excluding lawsuits against the state; or tax refunds in excess of 15% of the current year General Fund budget; or

(6) any other circumstances approved in writing by the commissioner of education.

(c) The declaration of financial exigency expires at the end of the fiscal year during which the declaration is made unless the school district board of trustees adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year.

(d) Each time the school district board of trustees adopts a resolution or an extension declaring financial exigency, the board must notify the commissioner within 20 calendar days of the adoption. The notice must include the date the resolution was adopted and the reason(s) for the declaration of financial exigency. The notice must be signed by the board president and submitted to the Texas Education Agency division responsible for financial audits.

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

Filed with the Office of the Secretary of State on November 21, 2011.

TRD-201105158

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 21, 2011
Expiration date: March 19, 2012
For further information, please call: (512) 475-1497



PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§77.10, 77.20 - 77.23, 77.40 - 77.42, 77.44, 77.70, 77.71, 77.80, 77.91

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 77, §§77.10, 77.20 - 77.23, 77.40 - 77.42, 77.70, and 77.80; and adds new §§77.44, 77.71 and 77.91, regarding the Service Contract Providers and Administrators program.

Senate Bill 1169, 82nd Legislature, Regular Session (2011), amended Texas Occupations Code, Chapter 1304, relating to the regulation of providers, administrators and sellers of service contracts, and Texas Occupations Code, Chapter 1306, relating to the regulation of providers, administrators and sellers of identity recovery service contracts. The proposed rules are necessary to implement the changes made by Senate Bill 1169 to Texas Occupations Code, Chapter 1304.

The proposed amendments are also necessary to align these rules under 16 TAC Chapter 77 with the existing and proposed rules for the Identity Recovery Service Contract Providers and Administrators program under 16 TAC Chapter 90. The proposed rules for the Identity Recovery Service Contract Providers and Administrators program are published separately in this issue of the *Texas Register*.

The proposed rules are also necessary to address public comments the Department received during the four-year rule review of the Service Contract Providers and Administrators program rules.

The Department published a Notice of Intent to Review its Service Contract Providers and Administrators program rules as part of the four-year rule review required under Texas Government Code §2001.039 (original notice published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10062); extension of time notice published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11078)). The Department reviewed these rules and determined that the rules were still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1304, Service Contract Providers and Administrators. The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, re-adopted the

rules in their existing form in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1696).

The Department received public comments in response to its Notice of Intent to Review. The re-adoption notice stated that the Department would address those public comments along with any suggested changes resulting from the Department's own review in a future proposed rulemaking.

The current proposal implements the new statutory requirements under Senate Bill 1169 and reflects the public comments submitted in response to the Notice of Intent to Review and the Department's own review of the rules.

In addition, as part of this proposal, the Department seeks public comments on how to implement through agency rules the new statutory provision under Texas Occupations Code §1304.161(c), relating to telemarketing. Public comments received in response to this request will assist the Department in drafting a proposed rule that may be published and open for additional public comment in a future proposed rulemaking.

§77.10. Definitions.

The proposal amends §77.10, Definitions. The proposal adds a new definition for "qualified financial institution" as used in Texas Occupations Code §1304.151 and in 16 TAC §77.42 regarding certificates of deposit and letters of credit issued by a qualified financial institution.

The proposal also deletes the current rule definition of "service contract seller" or "seller," since a slightly different definition of seller has been added to the statute. All entity definitions - provider, administrator, and seller - are now contained in the statute.

As part of the rule review process, the Service Contract Industry Council (SCIC) suggested adding a definition of "administrator" to the rules under §77.10. SCIC stated that "a review of the rules does not make it clear that Chapter 1304 of the Texas Occupations Code only requires third party administrators to register with the Department. Inclusion of a definition of the term administrator would help clarify this fact and avoid any confusion with respect to administrator registration." The Department declines to add the statutory definition of "administrator" to the rules. The Department has left all entity definitions - provider, administrator, and seller - in the statute.

§77.20. Registration Requirements--Provider.

The proposal amends §77.20, Registration Requirements--Provider. The proposal updates the language in subsection (a) to include references to service contracts "sold or issued" in this state to reflect the updated statutory language. The proposal changes the requirement under subsection (c) that each controlling person of a provider must submit a biographical

affidavit and instead requires the controlling person to submit a personal information form. This change reflects the statutory changes, and the new form is more streamlined for the provider's controlling persons to complete.

The proposal deletes current subsection (e), which addressed denying or revoking a registration if the applicant falsifies information on the application. This provision is already addressed under Texas Occupations Code §1304.102, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (f), which addressed the Department denying a registration if the applicant or its controlling person had violated Chapter 1304 of the Texas Occupations Code, the rules, or an order issued by the Commission or Executive Director. This provision is already addressed under Texas Occupations Code §1304.102. It is not necessary to repeat the provision in these rules.

§77.21. Registration Renewal Requirements--Provider.

The proposal amends §77.21, Registration Renewal Requirements--Provider. The proposal updates the language in subsection (c)(2) to include references to service contracts "sold or issued" in this state to reflect the updated statutory language.

During the rule review process, GS Administrators, Inc. suggested amending the provider registration renewal requirements under §77.21 by removing the "no change form" under subsection (c)(4). It proposed that the Department adopt a process where a biographical affidavit is filed only when there has been a material change to what is currently on file with the Department. GS Administrators, Inc. suggested that if "the Department seeks the confirmation each year that this process is being followed, it may consider adding a statement to that effect to the renewal application that is signed by an officer of the provider."

In response to this comment, Texas Occupations Code §1304.1025 requires an applicant for issuance or renewal of a provider registration to file with the application information about each controlling person of the applicant in a form prescribed by the executive director. Prior to Senate Bill 1169, the applicant had to submit a biographical affidavit for each controlling person.

The proposal amends §77.21(c)(4) to address the public comment and the revised statutory requirements. Except as provided under new subsection (d), instead of requiring every controlling person to fill out a personal information form or a "no change form" every year, a controlling person will only have to complete a new personal information form if there have been any changes to the information the controlling person previously submitted or if the controlling person has not previously submitted a personal information form. In addition, the applicant must indicate on the registration renewal form every year if there has or has not been any change in the information previously provided by any controlling person to the Department. The "no change form" is proposed to be deleted.

Due to the statutory changes under Texas Occupations Code §1304.102 and §1304.1025, the proposal adds a transition provision regarding renewals under new subsection (d). At the first registration renewal on or after March 1, 2012, each controlling person of a provider must complete a personal information form as prescribed by the executive director. This form replaces the former biographical affidavit. By completing the personal information form, all controlling persons of all providers will have sub-

mitted the same form and answered the same questions. It will give the Department a baseline for any future changes for all controlling persons. At any subsequent renewals, a controlling person will only have to complete a new personal information form if there have been any changes to the information the controlling person previously submitted or if the controlling person has not previously submitted a personal information form.

The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. The provision is already addressed under Texas Occupations Code §1304.102, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the Department denying a registration if the applicant or its controlling person had violated Chapter 1304 of the Texas Occupations Code, the rules, or an order issued by the commission or executive director. The provision is already addressed under Texas Occupations Code §1304.102. It is not necessary to repeat the provision in these rules.

§77.22. Registration Requirements--Administrator.

The proposal amends §77.22, Registration Requirements--Administrator. The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. The provision is already addressed under Texas Occupations Code §1304.102, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the Department denying a registration if the applicant or its controlling person had violated Chapter 1304 of the Texas Occupations Code, the rules, or an order issued by the commission or executive director. The provision is already addressed under Texas Occupations Code §1304.102. It is not necessary to repeat the provision in these rules.

§77.23. Registration Renewal Requirements--Administrator.

The proposal amends §77.23, Registration Renewal Requirements--Administrator. The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. The provision is already addressed under Texas Occupations Code §1304.102, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the Department denying a registration if the applicant or its controlling person had violated Chapter 1304 of the Texas Occupations Code, the rules, or an order issued by the commission or executive director. The provision is already addressed under Texas Occupations Code §1304.102. It is not necessary to repeat the provision in these rules.

§77.40. Financial Security--General Requirements.

The proposal amends §77.40, Financial Security--General Requirements. The proposal adds clarifying language to subsection (b) and updates the language in subsections (d) and (e) to

include references to service contracts "sold or issued" in this state to reflect the updated statutory language.

§77.41. Financial Security--Reimbursement Insurance Policy.

The proposal amends §77.41, Financial Security--Reimbursement Insurance Policy. The proposal removes the reference to "or equivalent language" under subsection (b)(1). The provider must use the Service Contract Provider Texas Endorsement that is prescribed by the executive director.

§77.42. Financial Security--Funded Reserve Account and Security Deposit.

The proposal amends §77.42, Financial Security--Funded Reserve Account and Security Deposit. The proposal updates the requirements under subsection (a) to include submission of the audited financial statements as prescribed under Texas Occupations Code §1304.151(b) and to add a reference to the funded reserve calculation form. The proposal updates the list of acceptable forms of security deposit under subsection (c) to reflect the statutory requirements. The proposal adds a new subsection (d) to reflect the additional financial reports that the provider may be required to submit in accordance with Texas Occupations Code §1304.151(b).

§77.44. Financial Security--Transition Provisions.

The proposal adds new §77.44, Financial Security--Transition Provisions. This section applies to providers registered with the Department on August 31, 2011, and who used the funded reserve account and security deposit option to financially secure their service contracts on August 31, 2011. This section addresses how these providers shall meet the new financial security requirements for existing and new service contracts. This section also defines "appropriate levels" of financial security as used in the statute.

§77.70. Responsibilities of Registrant--Provider and Administrator.

The proposal makes several changes to §77.70, including the title of this section, Responsibilities of Providers and Administrators.

As part of the rule review process, the Service Contract Industry Council (SCIC) stated that it supported §77.70(a) for the most part; however, SCIC wanted an exemption for marketing materials for service contracts issued by a manufacturer or its subsidiary on the manufacturer's products. In addition, SCIC proposed deleting marketing materials used by "sellers" from this requirement to reduce the impact on national retailers.

In response to these comments, the Department did not make any changes to subsection (a) except to remove the effective date. This rule clarifies the Department's interpretation of the statutory provisions, Texas Occupations Code §1304.156 and §1304.161(a). Texas Occupations Code §1304.156 requires a provider's name be included on written service contracts, and §1304.161(a) states: "A service contract provider, administrator, seller or other representative of the provider may not, in the provider's service contracts, literature, or any written communication: (1) make, permit, or cause to be made any false, deceptive, or misleading statement; or (2) deliberately omit a material statement if the omission would be considered misleading." The identity of the provider is a material statement since the provider is contractually and financially obligated to the service contract holders and providers are required to be registered to sell or issue service contracts in Texas. The identity of the provider is a

material statement for prospective buyers of service contracts. Exemptions to this provision for certain parties would defeat the purpose of the rule.

The proposal amends §77.70(d) by updating the list of information that providers and administrators must disclose to consumers and that reflect the new statutory requirements regarding service contract cancellations and refunds.

As part of the rule review process, an individual submitted comments suggesting that service contract companies be required to inform consumers regarding how much monetary value is left on a service contract after a repair is made. The individual expressed concern that while the time on his service contract had not expired, the money on his contract had run out and he did not find out until authorized repairs had been completed. The individual asked that consumers be given the right to be informed regarding the service contract's value after each repair so consumers can make an informed decision.

In response to this comment, Texas Occupations Code §1304.156(a)(7) requires that the service contract specify the products and services to be provided under the contract and any limitation, exception, or exclusion in the contracts. The contract holder should contact the provider for information about the amount left on the individual's service contract prior to repair. The specific amount left on a particular service contract would be based on the specific terms of a particular contract. The Department has added a broader provision under §77.70(d)(1) regarding service contract disclosures.

As part of the rule review process, SCIC suggested that §77.70(e) and (f) be amended to include the seller in these requirements since "many times the contract and written evidence of purchase are provided to the consumer by the seller at the point of sale." In addition, SCIC suggested that the language be amended to require that a copy of the service contract and receipt be provided to the service contract holder within 45 days of the date that the provider or administrator receives notice of the purchase, instead of the current 45 days from the date of purchase.

In response to these comments, the Department has included new language under §77.70(e) and (f) to recognize that the seller may provide a copy of the contract and the receipt at the point of sale; however, the provision still keeps the ultimate responsibility on the provider. Texas Occupations Code §1304.154 requires that the "provider" provide the service contract holder with the receipt and the copy of the contract "within a reasonable period after the date of purchase."

In addition, as a result of the statutory changes regarding cancellations and refunds under Texas Occupations Code §1304.1581, the current 45-day time frame in §77.70(e) and (f) has been changed. Texas Occupations Code §1304.1581 addresses whether the consumer can get a full or prorated refund based on if the consumer cancels before or after the "31st day after the date of purchase." The revised rule language provides that a copy of the contract and receipt must be provided to the consumer within a reasonable amount of time after the date of purchase to still allow the contract holder to cancel the contract and receive a full refund.

The proposal deletes §77.70(g), Responsibility for Marketing and Sales Activities, since Texas Occupations Code §1304.1531 addresses this issue.

As part of the rule review process, SCIC offered comments on §77.70(k), which requires a provider to notify the Department no later than 60 days prior to ceasing operations or not renewing its registration. SCIC stated that it understood the Department's desire to know when a provider has decided to cease operation in the state, but that this provision is unworkable since a provider may not know 60 days in advance. SCIC encouraged the Department to simply require providers to notify the Department as soon as possible prior to ceasing operations or deciding to not renew its registration.

In response to this comment, the proposal deletes §77.70(k) and adds a new provision under new §77.71, Responsibilities of Providers Ceasing Operations or Discontinuing Business. The new provision under §77.71(b) does not include a specific number of days as was required under former §77.70(k).

As part of the rule review process, GS Administrators, Inc. commented on §77.70(l)(1), which requires submission of the names and the number of the active service contracts affected when a provider ceases operations or does not renew its license. GS Administrators, Inc. stated that this provision is vague and the information may be difficult to track since providers may market the same form of contract under separate brand names and since it is unlikely that they track them on a per state basis. GS Administrators, Inc. suggested that providing a list of the brand names, the total number of active Texas service contracts, and the customers' names should be sufficient information.

In response to this comment, the proposal deletes §77.70(l) and adds a new provision under new §77.71, Responsibilities of Providers Ceasing Operations or Discontinuing Business. The new provision under §77.71(c) clarifies the list of information and documents required to be provided under former §77.70(l). Many of the items are specifically required to be kept as part of the provider's records as prescribed under Texas Occupations Code §1304.155.

As part of the rule review process, SCIC offered comments on §77.70(m), which requires a provider to notify its service contract holders no later than 30 days prior to ceasing operations or not renewing its registration. SCIC stated that this provision is unworkable for the same reasons as §77.70(k) and urged that it be deleted. SCIC stated that the notification would be confusing for consumers since a provider that ceases operations in the state is still obligated to perform its obligations to its existing contract holders.

In response to this comment, the proposal deletes §77.70(m) and adds a new provision under new §77.71, Responsibilities of Providers Ceasing Operations or Discontinuing Business. The change recognizes that a provider ceasing operations or discontinuing business in Texas does not necessarily mean that the provider has gone out of business or has stopped paying claims. New §77.71(d) includes the second sentence under former §77.70(m), which states that the provider remains contractually and financially responsible to its service contract holders with active service contracts in this state.

The proposal adds a new §77.70(j) that provides examples of the prohibited acts under Texas Occupations Code §1304.161(a), which addresses making a false, deceptive or misleading statement or omitting a material statement in any service contract, literature or written communication. This list of examples includes failure to make the required disclosures in the service contracts, failure to honor the terms of the service contracts, and failure to

pay eligible claims under the terms of the service contracts. The list under subsection (j) is not exhaustive.

§77.71. Responsibilities of Providers Ceasing Operations or Discontinuing Business.

The proposal adds a new §77.71, Responsibilities of Providers Ceasing Operations or Discontinuing Business. This provision consolidates into one rule the provisions formerly located under §77.70(k), (l), and (m). The new provisions were drafted to address the public comments received regarding the former provisions, which were discussed under §77.70. The new section also incorporates statutory requirements about these providers maintaining records and financial security to consolidate the requirements into one rule. The new section also recognizes that events such as bankruptcy or receivership may prevent or prohibit a provider from strict compliance with this section.

§77.80. Fees.

The proposal amends §77.80, Fees, by updating the language under subsections (b)(2) and (d) to clarify and reflect the statutory language. No changes have been made to the fee amounts.

§77.91. Other Enforcement Authority.

The proposal adds a new §77.91, Other Enforcement Authority, to address the Commission's and Department's other enforcement authority, which is in addition to their authority to impose administrative penalties and sanctions as described under current §77.90.

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

Mr. Kuntz also has determined that for each year of the first five-year period the statute and the proposed amendments and new rules are in effect, the public benefit will be additional consumer protections for service contract holders and more streamlined requirements for service contract providers. For service contract holders: (1) the financial security ensuring the service contracts has been strengthened; (2) there are additional consumer disclosures required; (3) there are additional cancellation and refund rights for service contract holders; and (4) specific information will be provided to the Department regarding companies that cease operations in Texas. For service contract providers: (1) the biographical affidavit has been eliminated and replaced with a simplified and streamlined personal information form; (2) the requirements for providers ceasing operations in Texas have been clarified and simplified; (3) new rules have been added to assist those providers that must transition to the new financial security requirements; and (4) where possible, the proposal has eliminated provisions that are already located in the statute.

There is no anticipated adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed. Any possible economic impact would be a result of the statute not the proposed amendments and new rules.

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

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

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 1304, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement and administer these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1304, and 1306. No other statutes, articles, or codes are affected by the proposal.

§77.10. *Definitions.*

The following words and terms, as used in this chapter and Texas Occupations Code, Chapter 1304, have the following meanings:

(1) "Qualified financial institution" means a financial institution organized and licensed under the laws of the United States, a state of the United States, or the District of Columbia.

~~{(1) "Service contract seller" or "seller" means a person, other than the provider or the administrator of the service contract, who is responsible for marketing, offering, or selling service contracts; but is not contractually obligated to a service contract holder under the terms of a service contract.}~~

(2) "Third-party administration of a service contract" includes any of the following activities performed on behalf of a service contract provider:

(A) performing or arranging the collection, maintenance, or disbursement of money to compensate any party for claims or repairs pursuant to a service contract;

(B) participating in the processing or adjustment of claims arising under a service contract;

(C) maintaining records required by Texas Occupations Code, Chapter 1304; or

(D) complying with provider requirements, other than financial security requirements, of Texas Occupations Code, Chapter 1304.

(3) The term "third party administration of a service contract" does not include the performance of repairs, or clerical functions ancillary to the performance of repairs, by a repair facility that performs no other activities with respect to a service contract.

§77.20. *Registration Requirements--Provider.*

(a) No person may operate as a provider of service contracts sold or issued, or offer to be a provider of service contracts sold or issued, in this state without first registering with the department, unless the service contracts offered by such person are specifically exempt from the application of Texas Occupations Code, Chapter 1304.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a completed personal information form [~~biographical affidavit~~] from each controlling person as defined in Texas Occupations Code §1304.0035;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;

(4) the required fee; and

(5) proof of financial security as prescribed under §77.40.

(d) Not later than the 30th day after the date of a provider's initial registration, the provider must submit the following information to the department:

(1) a list of internet website addresses through which a consumer may purchase the provider's service contracts, if any;

(2) a list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and department registration number; and

(3) a list of sellers of the provider's service contracts, except those excluded under Texas Occupations Code §1304.1025(c)(2), including each service contract seller's name, assumed name, street address, and telephone number.

~~{(e) Falsification of information on an application is cause for denial and/or revocation of the registration.}~~

~~{(f) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupations Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.}~~

§77.21. *Registration Renewal Requirements--Provider.*

(a) In order for a provider to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) the number of service contracts sold or issued by the provider in the preceding 12-month period;

(3) the updated lists of information required under §77.20(d);

(4) except as provided under subsection (d), a completed personal information form [~~biographical affidavit~~] from any [~~each~~] controlling person as defined in Texas Occupations Code §1304.0035 who has had a change in any of the information previously provided by the controlling person to the department or has not previously submitted a personal information form to the department. The applicant must indicate on the registration form if there has or has not been any change in the information previously provided by any controlling person to the department [~~; or a form indicating there has been no change in the biographical affidavit since the previous registration or renewal from each controlling person~~];

(5) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;

(6) the required fee; and

(7) proof of new or continuing financial security as prescribed under §77.40.

~~(d) Due to the statutory changes under Texas Occupations Code §1304.102 and §1304.1025, for the first registration renewal on or after March 1, 2012, each controlling person of a provider must complete a personal information form as prescribed by the executive director.~~

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.]~~

~~(e) [(f)] A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.~~

§77.22. *Registration Requirements--Administrator.*

(a) No person may operate as an administrator for a provider or offer to act as an administrator for a provider operating in this state without first registering with the department.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and

(4) the required fee.

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.]~~

§77.23. *Registration Renewal Requirements--Administrator.*

(a) In order for an administrator to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and

(4) the required fee.

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.]~~

~~(d) [(f)] A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.~~

§77.40. *Financial Security--General Requirements.*

(a) A provider must maintain financial security to ensure the faithful performance of a provider's obligations to its service contract holders and for the benefit of those service contract holders who suffer actual financial loss due to the provider's failure to perform those obligations.

(b) A provider must submit in a manner prescribed by the department proof of one of the following three forms of financial security that meets the requirements of Texas Occupations Code §1304.151 and/or §1304.152:

(1) a reimbursement insurance policy;

(2) a funded reserve account and a security deposit; or

(3) net worth of at least \$100 million.

(c) Whichever form of financial security the provider uses must be maintained by the provider during the entire time the provider continues to do business in this state or is registered to do business in this state and until the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.

(d) If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not sell or issue a new service contract after the effective date of the cancellation or lapse, unless and until the provider files with the executive director [a copy of] a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1304 and this chapter.

(e) Cancellation or lapse of the financial security does not affect the provider's liability for a service contract sold or issued by the provider before or after the effective date of the cancellation or lapse.

§77.41. *Financial Security--Reimbursement Insurance Policy.*

(a) A provider that uses a reimbursement insurance policy to comply with the financial security requirements of Texas Occupations Code §1304.151 and §1304.152, will not be allowed to obtain or renew a registration unless the insurer issuing the policy has provided all of the information and met all of the requirements set forth in Texas Occupations Code §1304.152(a-1).

(b) A reimbursement insurance policy that is used to comply with the financial security requirements of Texas Occupations Code §1304.151 and §1304.152 must include:

(1) the "Service Contract Provider Texas Endorsement" prescribed by the executive director[~~or equivalent language~~]; and

(2) copy of the approval letter from the Texas Department of Insurance for using the endorsement.

§77.42. *Financial Security--Funded Reserve Account and Security Deposit.*

(a) A provider that uses a funded reserve account and security deposit to comply with the financial security requirements of Texas Occupations Code §1304.151, will not be allowed to obtain or renew a registration unless the provider:

(1) maintains the funded reserve account and the security deposit at or above the financial levels required under Texas Occupations Code §1304.151(b). These amounts are calculated using a form prescribed by the department; ~~and~~

(2) meets the requirements under this section; and~~[-]~~

(3) submits the most recent audited financial statements as prescribed under Texas Occupations Code §1304.151(b).

(b) The funded reserve account maintained by the provider must:

(1) be kept separate from the provider's operating accounts;

(2) be clearly identified as the "{Provider's Name} Texas Service Contracts Funded Reserve Account"; and

(3) not be used for any purpose other than to cover the provider's obligations under its service contracts that are issued and outstanding in this state.

(c) In addition to maintaining the funded reserve account, the provider must submit one of the following forms of security deposit:

~~{(1) A surety bond that:}~~

~~{(A) is issued by a surety company authorized to do business in the State of Texas;}~~

~~{(B) conforms to the Texas Insurance Code;}~~

~~{(C) is on the form prescribed by the department; and}~~

~~{(D) is payable to the executive director for the satisfaction of eligible service contract holder claims;}~~

(1) ~~[(2)]~~ A certificate of deposit that is issued by a qualified financial institution, assigned to the executive director, and for the benefit of the department;

~~{(3) Securities of the type eligible for deposit by an authorized insurer in Texas;}~~

(2) ~~[(4)]~~ A deposit of cash ~~[or cash equivalents];~~ or

(3) ~~[(5)]~~ An original letter of credit acceptable to the department that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the provider;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the provider or other party.

(d) Upon request, the department may require the provider to submit the following additional financial reports:

(1) claims paid reports;

(2) account statements;

(3) monthly activity reports; or

(4) actuarial reports.

§77.44. Financial Security--Transition Provisions.

(a) This section applies to providers who registered with the department on August 31, 2011, and who used the funded reserve account and security deposit option to financially secure their service contracts on August 31, 2011.

(b) These providers have until September 1, 2012, to submit financial security that meets the new requirements under Texas Occupations Code Chapter 1304 and this chapter for service contracts sold or issued on or after September 1, 2012.

(c) These providers must ensure that contracts sold or issued before September 1, 2012, are financially secured by meeting one of the following two methods:

(1) Maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until those contracts are no longer in effect; or

(2) Provide new financial security that meets the new requirements under Texas Occupations Code Chapter 1304 and this chapter that will cover all service contracts sold or issued before September 1, 2012, in addition to covering all service contracts sold or issued on or after September 1, 2012.

(d) For purposes of subsection (c), "appropriate levels" are defined as the amounts required using the statutory formulas for the funded reserve account and security deposit that were in effect on August 31, 2011. These amounts are calculated using a form prescribed by the department.

(1) Funded Reserve Account Formula--The amount maintained in the funded reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid.

(2) Security Deposit Formula--The amount of the security deposit may not be less than the greater of:

(A) \$25,000; or

(B) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid.

(e) These providers may continue to use the forms of the security deposit that were permissible on August 31, 2011, for service contracts sold or issued before September 1, 2012.

§77.70. Responsibilities of Providers and Administrators [Registrar--Provider and Administrator].

(a) The provider must clearly and conspicuously identify itself on all written service contracts and~~[- effective February 1, 2010,-]~~ on all written advertising materials that are used by the provider, its administrator(s), or its seller(s).

(b) The provider and/or any administrator appointed by the provider must provide service contract holders with a notification that meets all of the following requirements.

(1) The notification must provide the name, mailing address, and telephone number of the department.

(2) The notification must contain a statement that unresolved complaints concerning providers and administrators ~~[a registrant]~~ or questions concerning the regulation of service contract providers and administrators may be addressed to the department.

(3) The notification must be included on all written service contracts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.

(c) The provider and/or any administrator appointed by the provider must provide service contract holders with the provider's complaint resolution procedures.

(d) The provider and/or any administrator appointed by the provider must disclose the following information to service contract holders:

(1) the specific contract provisions and required disclosures in accordance with Texas Occupations Code §1304.156; [procedures and timeframes for returning a service contract in accordance with Texas Occupations Code §1304.157;]

(2) the procedures and timeframes for a service contract holder to cancel [voiding] a service contract in accordance with Texas Occupations Code §1304.1581 [§1304.158];

(3) the procedures and timeframes for a provider to refund [refunding] the purchase price of the service contract and pay any applicable penalty to the service contract holder in accordance with Texas Occupations Code §1304.1581 [§1304.158]; and

(4) the conditions in which the provider [and/or administrator] may cancel a service contract and issue a refund in accordance with Texas Occupations Code §1304.159.

(e) If not provided by the seller at the time of sale, the [The] provider and/or any administrator appointed by the provider must provide a copy of the service contract to the service contract holder within a reasonable amount of time after [45 days from] the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

(f) If not provided by the seller at the time of sale, the [The] provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of a service contract to the service contract holder within a reasonable amount of time after [45 days from] the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

[(g) Responsibility for Marketing and Sales Activities.]

[(1) The provider is responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's service contracts pursuant to Texas Occupations Code, Chapter 1304 and this chapter.]

[(2) The provider is not responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's service contracts if:]

[(A) the provider has a written contract with a seller;]

[(B) the contract requires the seller to follow Texas Occupations Code, Chapter 1304 and this chapter;]

[(C) the provider provides training to the seller about the product and the law;]

[(D) the provider immediately instructs a seller to correct its practices if the provider obtains knowledge that the seller is violating Texas Occupations Code, Chapter 1304 or this chapter;]

[(E) the provider terminates its use of a particular seller who fails to correct its practices within 14 days after being instructed by the provider to make corrections; and]

[(F) the provider notifies the department within 10 days of terminating a seller pursuant to subparagraph (E).]

[(g) [(h)] A provider shall report to the department within 30 days any change in information required by §77.20 and §77.21.

[(h) [(i)] An administrator shall report to the department within 30 days any change in information required by §77.22 and §77.23.

[(i) [(j)] Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code, Chapter 1304. These records include copies of the service contracts marketed, sold, administered or issued in this state.

[(j) The provider's service contracts, literature, and any written communications become false, deceptive or misleading under Texas Occupations Code §1304.161(a) when the provider, administrator, seller or other representative of the provider engages in any of the following activities, including but not limited to:

[(1) does not include in its service contracts the required contract provisions and disclosures under Texas Occupations Code §1304.156;

[(2) fails to honor any of the terms of the service contract;

[(3) fails to pay an eligible claim under the terms of the service contract.

[(k) A provider must notify the department no later than 60 days prior to the provider ceasing operations in this state. A provider must notify the department as soon as possible after the provider files for bankruptcy or is placed into receivership and must provide the contact information for the bankruptcy trustee or receiver and the court handling these proceedings.]

[(l) Within 10 days after notifying the department in accordance with subsection (k), a provider must submit to the department:]

[(1) the names of the service contracts sold or issued by the provider in this state and the number of active service contracts under each service contract name;]

[(2) the names and addresses of the service contract holders with active service contracts in this state and the remaining amount of time left on these active service contracts; and]

[(3) any other information determined necessary by the department relating to the provider ceasing operations in this state.]

[(m) A provider must notify service contract holders with active service contracts in this state no later than 30 days prior to the provider ceasing operations in this state. The provider remains financially responsible to service contract holders with active service contracts in this state.]

§77.71. Responsibilities of Providers Ceasing Operations or Discontinuing Business.

(a) To the extent not prohibited by any other law or court order, a provider must comply with the provisions under this rule when ceasing operations or discontinuing business in this state.

(b) A provider must notify the department as soon as possible when ceasing operations or discontinuing business in this state.

(c) Within 10 days after notifying the department in accordance with subsection (b), a provider must submit to the department:

(1) a copy of each unique form of service contract sold;

(2) the names and addresses of the service contract holders with active service contracts in this state;

(3) a list of each location, whether it be a physical location or a website address, at which the provider's service contracts are marketed, sold, or offered for sale;

(4) the total number of active service contracts in this state;

(5) the remaining amount of time left on the active service contracts in this state; and

(6) any other information determined necessary by the department relating to the provider ceasing operations in this state.

(d) A provider that ceases operations or discontinues business in this state remains contractually and financially responsible to its service contract holders with active service contracts in this state.

(e) A provider that ceases operations or discontinues business in this state shall retain its records until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.

(f) Any security deposit on file with the department shall be retained by the department until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.

§77.80. Fees.

(a) All registration fees are non-refundable.

(b) Provider Fees.

(1) The initial registration fee for a service contract provider is \$250.

(2) The annual renewal registration fee for a service contract provider is:

(A) \$250 for registrants selling or issuing [providing] 0 to 250 service contracts during the 12-month period preceding the expiration date of the registration;

(B) \$500 for registrants selling or issuing [providing] 251 to 499 service contracts during the 12-month period preceding the expiration date of the registration; and

(C) \$1,000 for registrants selling or issuing [providing] 500 or more service contracts during the 12-month period preceding the expiration date of the registration.

(3) The fee for a duplicate or amended registration certificate is \$25.

(c) Administrator Fees.

(1) The initial registration fee for an administrator is \$250.

(2) The annual renewal registration fee for an administrator is \$250.

(3) The fee for a duplicate or amended registration certificate is \$25.

(d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees). The late fee is based on the number of service contracts sold or issued during the 12-month period preceding the expiration date of the registration.

§77.91. Other Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1304 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1304 and this chapter.

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 November 28, 2011.

TRD-201105194

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-5386



CHAPTER 83. COSMETOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 83, §§83.10, 83.20, 83.21, 83.23, 83.25, 83.26, 83.31, 83.51, 83.70 - 83.72, 83.74, 83.80, 83.100, 83.102, 83.104 - 83.106, 83.112, and 83.120; proposes the repeal of §83.75; and proposes new §83.115, regarding the cosmetology program.

These proposed amendments are necessary to implement Senate Bill 1170 (SB1170), 82nd Legislature, Regular Session (2011), which amended Texas Occupations Code, Chapters 1601, 1602 and 1603. The proposed amendments are also in response to the Texas Commission of Licensing and Regulation's (Commission) rule simplification initiative. The proposed changes reduce the number of continuing education courses required for license renewal, change the term "facialist" to "esthetician", amend the eligibility and curriculum requirements for instructors and specialty instructors, create an esthetician/manicure specialty license and an eyelash extension specialty license, expand cosmetology school options for tracking student hours, clarify the definition of school withdrawal and termination, and eliminate the specific number of practical applications required in schools.

In addition, the proposed changes reduce the square footage a cosmetology school must have, specify the equipment required to teach specialty curriculums, reformulate refund policy calculations, eliminate the requirement that sanitizers and sterilizers be department-approved, and allow for early examination for the written portion of the cosmetology operator exam.

§83.10. Definitions.

Proposed amendment to §83.10 establishes definitions, in addition to those found in Texas Occupations, Chapters 1602 and 1603, for the terms that are used in the statutes and rules. Proposed amendments §83.10(9) and (10) provide definitions for "eyelash extension application" and "eyelash extension specialist".

The proposed amendment to §83.10(11) changes the term "facialist" to "esthetician". The proposal also amends §83.10(22) and (28) to add definitions for "preparation" and "tweezing techniques". Current §83.10(20) which defines "registered examination proctor" is deleted as an unnecessary definition.

§83.20. License Requirements--Individuals.

The proposed amendments to §83.20 add the licensing requirements for an esthetician/manicurist specialty license and eyelash extension specialty license. The instructor license and specialty instructor licenses have been amended to specify that college or university education courses will be considered when applying for an instructor license. In addition, the proposed amendment deletes eligibility requirements for registered examination proctors.

§83.21. License Requirements--Examinations.

The proposal amends §83.21 to allow for early examination of the written exam for a student who completes 1,000 hours of a 1,500-hour operator curriculum and 900 hours of a 1,000-hour operator curriculum. Proposed amendment to §83.21(g) eliminates the requirement that applicants wear a smock/lab coat with sleeves when taking the practical examination.

§83.23. License Requirements--Beauty Culture Schools.

The proposal amends §83.23 to establish square footage requirements based upon the population of the county in which the school is located.

§83.25. License Requirements--Continuing Education.

The proposal amends §83.25 by eliminating subsections (b) - (d) which refer to continuing education licensing requirements for licenses that expire before September 1, 2008. These subsections were included as transition provisions and are no longer necessary. The proposed amendments to §83.25 also reduce the number of required continuing education hours from six to four beginning on or after September 1, 2012. The proposed changes also reduce the continuing education requirement from two hours to one hour for persons over 65 years of age who have held a license for at least 15 years.

§83.26. License Requirement--Renewals.

The proposed amendments to §83.26 simplify the rule renewal language.

§83.31. Licenses--License Terms.

The proposal amends §83.31 to add the esthetician/manicurist specialty license, the eyelash extension specialty license, and the non-renewable shampoo apprentice permit to the types of licenses that have a term of two years. In addition, the proposed rule clarifies that a student permit does not expire. The license term for examination proctor registration is deleted.

§83.51. Initial Inspections--Inspection of Beauty Culture Schools Before Operation.

The proposal amends §83.51 to remove the 45-day initial inspection scheduling requirement.

§83.70. Responsibilities of Individuals.

The proposed amendment to §83.70(e) expands the options a license holder has when displaying her/his license to allow for posting at the work station or at the salon reception desk. The proposal eliminates §83.70(i) which requires licensees to make appointments to provide services to incapacitated or deceased persons through a salon.

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.

Proposed amendment to §83.71(d)(7) deletes the term "department-approved" from the sterilizer or sanitizer equipment

requirements. The proposal deletes §83.71(e)(1)(D) and renumbered (e)(7)(D) which currently require beauty and wig salons to provide hand-held hair dryers to salon employees.

§83.72. Responsibilities of Beauty Culture Schools.

The proposal amends §83.72 to provide an additional way for beauty culture schools to track student hours. The proposed amendment gives schools the option of using credit hours or clock hours. The proposed rule also establishes minimum equipment requirements for teaching the operator, esthetician, manicure, esthetician/manicure, and eyelash extension curriculums.

§83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.

The proposal amends §83.74 to change the term "credit hours" to "credit" so that the term will include both clock hours and credit hours and defines the term "withdrawal or termination" by the number of hours scheduled according to the enrollment agreement or contract the student has signed with the school and not the clock hours the student has earned during class attendance.

§83.75. Responsibilities of Registered Examination Proctors.

Existing §83.75 is being repealed. The Department contracts with a testing company to develop, administer, and grade examinations and does not register examination proctors.

§83.80. Fees.

The proposal amends §83.80 to delete the registration, examination, and renewal fees for registered examination proctors.

§83.100. Health and Safety Definitions.

The proposed amendment to §83.100(9) changes the definition of "sterilize or sterilization" to mean the elimination of all forms of bacteria by use of an autoclave or dry heat sterilizer. The proposal also adds §83.100(10) to define "sanitize or sanitization" as the reduction in the number of microorganisms to a safe level by use of an ultraviolet sanitizer.

§83.102. Health and Safety Standards--General Requirements.

The proposed amendment to §83.102(b), which prohibits a licensee from performing services on a client if the licensee has reason to believe the client has a contagious condition, adds the term "conjunctivitis," a condition encountered when performing eyelash extension application services.

§83.104. Health and Safety Standards--Facial Services.

The proposed amendments to §83.104 changes the title from "Health and Safety Standards--Facial Services" to "Health and Safety Standards--Esthetician Services"; expands the requirement to clean and disinfect tweezers and comedone extractors to include all types of multiple use implements; and adds the phrase "and other preparation" to items subject to cross contamination.

§83.105. Health and Safety Standards--Waxing Services.

The proposed amendments to §83.105 change the title from "Health and Safety Standards--Waxing Services" to "Health and Safety Standards--Temporary Hair Removal Services" and clarify that the health and safety standards apply to all temporary hair removal services.

§83.106. Health and Safety Standards--Manicure and Pedicure Services.

The proposed revisions to §83.106 amend the methods of cleaning, disinfecting and sterilizing to include the option of sanitizing implements when providing manicure and pedicure services.

§83.112. Health and Safety Standards--Prohibited Products or Practices.

The proposed amendment to §83.112 adds subsection (c) which prohibits the use of products or procedures that come into contact with the dermis layer of the skin.

§83.115. Health and Safety Standards--Eyelash Extension Application Services.

The proposed new rule §83.115 adds health and safety standards for persons who perform eyelash extension application services.

§83.120. Technical Requirements--Curriculum.

The proposed amendments to §83.120 address curriculum requirements for the following license types: class A barber to cosmetology operator, esthetician/manicure, eyelash extension, cosmetology instructor (750 hours), and cosmetology instructor (500 hours with one year experience). The proposal amends §83.120(d) to eliminate the requirement that cosmetology students complete a minimum number of practical applications.

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

Mr. Kuntz has also determined that for each year of the first five-year period the proposed amendments, repeal, and new rule are in effect, the public benefit will be enhanced because repealing obsolete and unnecessary rules will make them more accessible to the cosmetology industry. The reduction of the square footage requirements for cosmetology schools will result in lower overhead costs for schools that choose to occupy smaller spaces. The reduction in space and equipment requirements will also give schools more options in the types of curriculums they choose to provide and tracking student hours by clock or credit will provide greater flexibility. The creation of new specialty licensees will provide cost and time savings for students who chose to obtain a specialty license because they will take and pay for fewer curriculum hours, will graduate earlier, and will begin practicing their occupation sooner.

There will be an economic effect on small or micro-business or to persons who are required to comply with the rules as proposed under Texas Government Code, Chapter 2006. The reduction in continuing education hours may have some negative financial impact on the approximately 155 Continuing Education Providers who are small or micro-businesses that provide continuing education courses for cosmetologists. The Department does not monitor the fees that continuing education providers charge for hours or courses but a review of on-line courses shows an average price of \$55 to \$65 for a six-hour course. Estimated fees could be reduced by approximately one-third if course hours and/or fees are reduced to reflect the reduction in continuing education hours. The Department does not regulate the fees that continuing education providers charge and some providers may choose to raise fees in response to the reduction in hours.

Conversely, there will be costs and time savings to approximately 187,000 licensees who will benefit from the reduction in

hours, many of whom are also small businesses. The amount of savings to each licensee will vary depending upon the course in which the licensee chooses to enroll. The Department has considered not reducing continuing education hours or reducing them by one hour instead of two; however, the Advisory Board on Cosmetology believes that the benefit to license holders outweighs any possible negative impact to continuing education providers.

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

16 TAC §§83.10, 83.20, 83.21, 83.23, 83.25, 83.26, 83.31, 83.51, 83.70 - 83.72, 83.74, 83.80, 83.100, 83.102, 83.104 - 83.106, 83.112, 83.115, 83.120

The amendments and new rule are proposed under Texas Occupations Code, Chapters 51, 1601, 1602, and 1603, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

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

- (1) Act--Texas Occupations Code, Chapters 1602 and 1603.
- (2) Beauty Culture School--A cosmetology school, public or private that is subject to regulation under the Act.
- (3) Board--The Advisory Board on Cosmetology.
- (4) Booth rental license--A license that allows an operator, manicurist, esthetician, esthetician/manicurist, eyelash extension specialist [~~facialist~~], hair weaver or braider, wig specialist, [~~ø~~] instructor or specialty instructor to lease space on the premises of a beauty shop to engage in the practice of cosmetology as an independent contractor.
- (5) Department--The Texas Department of Licensing and Regulation.
- (6) Commission--The Texas Commission of Licensing and Regulation.
- (7) Cosmetology establishment--A beauty salon, specialty salon, dual shop, mobile shop, or beauty culture school, public or private, that is subject to regulation under the Act.
- (8) Dual Shop--A dual barber and beauty shop licensed under Texas Occupations Code, §1603.205.
- (9) Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.
- (10) Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(12).

(11) ~~[(9)]~~ Esthetician [Facialist]--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1602.002(a)(6) - (9) and (12). The term esthetician in this chapter includes the term facialist. [application of facial cosmetics, manipulations, eye tabbing, arches, lash and brow tints, and the temporary removal of hair by the use of depilatory, mechanical tweezers, or wax.]

(12) Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(6) - (12).

(13) ~~[(10)]~~ Hair braider--A person authorized by the department to braid hair. Such practice shall not include shampooing, conditioning, drying, styling, or applying any chemicals, including color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl or alter the structure of hair. A hair braider may trim hair extensions only as applicable to the braiding process. Commercial hair may be attached only by braiding and without the use of chemicals or adhesives.

(14) ~~[(11)]~~ Hair weaver--Person authorized by the department to perform the services of a hair braider as defined in this section and, additionally, may attach hair by any weaving method. Such practice may include shampooing, conditioning, and drying performed in connection with a hair weaving service. Such practice may not include styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(15) ~~[(12)]~~ Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(16) ~~[(13)]~~ Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(17) ~~[(14)]~~ License--A department-issued permit, certificate, approval, registration, or other similar permission required by law.

(18) ~~[(15)]~~ License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(19) ~~[(16)]~~ Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(10) [~~§1602.002(10)~~] and (11).

(20) ~~[(17)]~~ Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(21) ~~[(18)]~~ Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(22) Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(23) ~~[(19)]~~ Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

~~[(20)]~~ Registered Examination Proctor--An individual authorized by the department to evaluate or grade a practical examination

for the department for a license issued under Texas Occupations Code, Chapter 1602.]

(24) ~~[(21)]~~ Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(25) ~~[(22)]~~ Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code §1602.002(a)(3) [~~§1602.002(3)~~], relating to shampooing and conditioning a person's hair.

(26) ~~[(23)]~~ Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(7) [~~§1602.002(7)~~], (9), [~~and/or~~] (10) and/or (12). [~~Specialty instructors may only teach the subject matter in which they are licensed.~~]

(27) ~~[(24)]~~ Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(2) [~~§1602.002(2)~~], (4), (7), (9), [~~or~~] (10) or (12) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(28) Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, thread or other material.

(29) ~~[(25)]~~ Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(30) ~~[(26)]~~ Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

§83.20. License Requirements--Individuals.

(a) To be eligible for an operator license~~], facialist specialty license, or manicurist specialty license.~~] an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §83.80;
- (3) be at least 17 years of age;
- (4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training;
- (5) have completed the following hours of cosmetology curriculum in a licensed beauty culture school either:

~~[(A) for an operator license, one of the following:]~~

(A) ~~[(i)]~~ 1,500 [~~1500~~] hours of instruction in a beauty culture school; or

(B) ~~[(ii)]~~ 1,000 [~~1000~~] hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the department in a vocational or career and technical cosmetology program in a public school; or ~~[-]~~

(C) 300 hours of instruction in cosmetology through a commission-approved training program in a beauty culture school and hold an active Class A barber certificate; and

~~[(B) for a facialist specialty license, 750 hours of instruction.]~~

~~[(C) for a manicurist specialty license, 600 hours of instruction; and]~~

(6) pass a written and practical examination required under §83.21.

(b) To be eligible for an esthetician, manicurist, or esthetician/manicurist specialty license an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the required fee under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training;

(5) have completed the following hours of cosmetology curriculum in a licensed beauty culture school:

(A) for an esthetician specialty license, 750 hours of instruction;

(B) for a manicurist specialty license, 600 hours of instruction;

(C) for an esthetician/manicurist specialty license; either:

(i) 1,200 hours of esthetician/manicure specialty instruction; or

(ii) 750 hours of esthetician instruction; and

(iii) 600 hours of manicure instruction; and

(6) pass a written and practical examination required under §83.21.

(c) A person who holds both an active esthetician license and an active manicurist license is eligible for an esthetician/manicurist specialty license by submitting a completed application on a department-approved form and paying the required fee under §83.80.

(d) To be eligible for an eyelash extension specialty license an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(5) for applicants applying on or before April 1, 2012, either:

(A) submit proof of successful completion of a department-approved training program provided by an eyelash extension manufacturer or distributor; or

(B) complete at least 240 hours of verifiable practical experience performing the practice of cosmetology defined in Texas

Occupations Code §1602.002(a)(12) at a facility licensed under this chapter.

(6) for applicants applying after April 1, 2012;

(A) have satisfactorily completed 320 hours of instruction in a department-approved eyelash extension application training program; and

(B) pass a written and practical examination required under §83.21.

(e) ~~[(h)]~~ To be eligible for a hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;

(B) for a hair braiding specialty certificate, 35 hours of instruction;

(C) for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment; or

(D) for a shampoo/conditioning specialty certificate, 150 hours of instruction completed in not less than four weeks from date of enrollment; and

(5) for a hair weaving specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, pass a written and practical examination required under §83.21. No examination is required for a hair braiding specialty certificate.

(f) ~~[(e)]~~ To be eligible for an instructor license[; facial instructor specialty license, or manicure instructor specialty license,] an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 18 years of age;

(4) have a high school diploma or a high school equivalency certificate;

(5) hold an active operator license under this chapter; and

(A) have completed a course consisting of 750 hours of instruction in methods of teaching in a licensed private beauty culture school or a vocational training program of a publicly financed postsecondary institution; or

(B) have at least one year of verifiable work experience as a licensed operator; and

(i) have completed 500 hours of instruction in cosmetology in a commission-approved training program; or

(ii) have completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or

(iii) have obtained a degree in education from an accredited college or university; and

(6) pass a written and practical examination required under §83.21.

~~[(1) pass a written examination and practical demonstration of teaching skills required under §83.21;]~~

~~[(2) be at least 18 years of age;]~~

~~[(3) have completed the 12th grade or its equivalent;]~~

~~[(4) pay the fee required under §83.80; and]~~

~~[(5) meet the following requirements:]~~

~~[(A) for an instructor license, hold an active operator license and have completed one of the following:]~~

~~[(i) 750 hours in methods of teaching the student;]~~

~~[(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of operator experience in a licensed beauty salon or dual shop.]~~

~~[(B) for a facial instructor specialty license, hold an active operator or facialist specialty license and have completed one of the following:]~~

~~[(i) 750 hours in methods of teaching the student;]~~

~~[(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of facial experience in a licensed beauty salon, dual shop, or facial specialty salon.]~~

~~[(C) for a manicure instructor specialty license, hold an active operator or manicurist specialty license and have completed one of the following:]~~

~~[(i) 750 hours of instruction in cosmetology courses and methods of teaching in a department-approved school or program;]~~

~~[(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of manicure experience in a licensed beauty salon, dual shop, or manicure specialty salon.]~~

(g) To be eligible for an esthetician instructor, manicure instructor, esthetician/manicure instructor or eyelash extension instructor specialty license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 18 years of age;

(4) have a high school diploma or a high school equivalency certificate;

(5) hold a current specialty license in the specialty or specialties in which the applicant is seeking licensure; and

(A) have completed a course consisting of 750 hours of instruction in methods of teaching in a licensed private beauty culture school or a vocational training program of a publicly financed postsecondary institution; or

(B) have at least one year of verifiable licensed experience in each of the specialties in which the applicant is seeking licensure; and

(i) have completed 500 hours of instruction in cosmetology in a commission-approved training program; or

(ii) have completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or

(iii) have obtained a degree in education from an accredited college or university; and

(6) pass a written and practical examination required under §83.21.

(h) [(d)] To be eligible for a shampoo apprentice permit, an applicant must:

(1) be at least 16 years of age; and

(2) submit a completed application on a department-approved form.

(i) [(e)] To be eligible for a student permit, an applicant must:

(1) submit a completed application on a department-approved form; and

(2) pay the fee required under §83.80.

[(f) To be eligible for a registered examination proctor registration, an applicant must:]

[(1) have held an active instructor license for at least two of the five years preceding the application;]

[(2) hold an active instructor license;]

[(3) obtain a certificate of completion from a department-approved training course;]

[(4) submit a completed application on a department-approved form; and]

[(5) pay the applicable fee under §83.80.]

[(g)] A license application is valid for one year from the date it is filed with the department.

§83.21. License Requirements--Examinations.

(a) To be eligible for a department examination, an examinee must:

(1) submit a completed license application on a department-approved form;

(2) pay the applicable license fee under §83.80; and

(3) have completed the number of curriculum hours required under this chapter and the Act.

(b) For an operator license, a student enrolled in a 1,500 hour program is eligible to take the written examination when the department receives proof of the student's completion of 1,000 operator curriculum hours. A student enrolled in a 1,000 hour program is eligible to take the written examination when the department receives proof of the student's completion of 900 operator curriculum hours. [as specified by Texas Occupations Code §1603.255, relating to early examination.]

(c) Applicants must pass the written examination before being eligible to take the practical examination.

(d) When appearing for an examination, the examinee shall bring the instruments necessary to give a practical demonstration of cosmetology services or a practical demonstration of the services distinctive to his or her specialty.

(e) All department examinations consist of a written and practical part. A passing grade of 70 on each part is needed to satisfy the examination requirement.

(f) To be admitted to an examination, the examinee must present a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

(g) Examinees are required to wear [a smock/lab coat with sleeves and] closed toe shoes for the practical examination.

(h) Models used in an examination are required to be at least 16 years of age. The department may require parental approval for models under 18 years of age.

§83.23. License Requirements--Beauty Culture Schools.

(a) To be eligible for a beauty culture school license, an applicant must:

- (1) obtain the current law and rules book;
- (2) comply with the requirements of the Act and this chapter;
- (3) submit a completed application on a department-approved form;
- (4) one of the following:

(A) for a private beauty culture school, pay the applicable license and inspection fees required under §83.80 and any required fee under §83.40; or

(B) for a public beauty culture school, pay the applicable inspection fee required under §83.80; and

(5) for a private beauty culture school, provide a current financial statement prepared by a certified public accountant. If the financial statement is more than 180 days old, an applicant must also provide a supplemental financial statement within 180 days of the application.

(b) A beauty culture school must be inspected and approved by the department prior to the operation of the school. [To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.]

(c) Private beauty culture schools must have and maintain the following:

(1) a building of permanent construction [of not less than 3,500 square feet] that must include [includes] two separate areas, one area for instruction in theory and one area for clinic work, and that must also include access to permanent restrooms and adequate drinking fountain facilities [separate restrooms for male and female];

(2) In counties with populations of 100,000 or less, the building must have a minimum of 1,800 square feet of floor space. In counties with populations of more than 100,000, the building must have a minimum of 2,800 square feet of floor space. Population shall be determined according to the current decennial data compiled by the United States Census Bureau.

(3) [(2)] equipment established by the department sufficient to instruct a minimum of 10 [50] students;

(4) [(3)] proof of ownership of building or proof of a lease for the first 12 months of operation; and

[(4) current inspection report(s) of the fire marshal and building official approving or confirming compliance with applicable laws and ordinances; and]

(5) a copy of the curriculum approved by the department for each course offered.

(d) Public beauty culture schools must have and maintain the following:

(1) not less than 2,200 square feet that includes office, dispensary, locker room, classroom [space,] and [at least 1,200 square feet of] laboratory space;

(2) equipment required by the department; and

[(3) if off-campus facilities are utilized, proof of a lease for the first 12 months of operation;]

[(4) current inspection report(s) of the fire marshal and building official approving or confirming compliance with applicable laws and ordinances; and]

(3) [(5)] a copy of the curriculum approved by the department for each course offered.

§83.25. License Requirements--Continuing Education.

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

[(b) To renew an operator or instructor license that expires prior to September 1, 2008, a licensee must complete a total of 12 hours of continuing education through department approved courses, of which 4 hours must be in Sanitation required under the Act and 16 TAC Chapter 83.]

[(c) To renew a manicure instructor specialty license, manicurist specialty license, facial instructor specialty license, facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate that expires prior to September 1, 2008, a licensee must complete a total of 8 hours of continuing education through department approved courses, of which 4 hours must be in Sanitation required under the Act and 16 TAC Chapter 83.]

[(d) If a licensee holds an instructor license, facial instructor specialty license, or manicure instructor specialty license that expires prior to September 1, 2008, then, of the total hours required under subsection (b) or (c), the licensee must complete 2 hours in Methods of Teaching in accordance with §83.120.]

(b) [(c)] To renew an operator license, or an esthetician, manicurist, esthetician/manicurist or a [specialty license, facialist specialty license,] hair weaving [specialty certificate], hair braiding [specialty certificate], wig [specialty certificate], or shampoo/conditioning specialty certificate that expires prior to September 1, 2012 [on or after September 1, 2008], a licensee must complete a total of 6 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 2 hours in Sanitation required under the Act and this chapter [16 TAC Chapter 83];

(2) 2 hours in the Act and this chapter [16 TAC Chapter 83,] addressing topics other than Sanitation; and

(3) 2 hours in any topics listed in subsection (i) [(f)].

(c) To renew an operator license, or an esthetician, manicurist, esthetician/manicurist or eyelash extension specialty license, or a hair weaving, hair braiding, wig, or shampoo/conditioning specialty certificate that expires on or after September 1, 2012, a licensee must complete a total of 4 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 1 hour in Sanitation required under the Act and this chapter; and

(2) 3 hours in any topics listed in subsection (i).

(d) ~~[(f)]~~ To renew an instructor license, an esthetician instructor, manicure instructor, or esthetician/manicure instructor [specialty license, or facial instructor specialty] license, that expires prior to [on or after] September 1, 2012 [2008], a licensee must complete a total of 6 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 2 hours in Sanitation required under the Act and this chapter [46 TAC Chapter 83];

(2) 2 hours in the Act and this chapter [46 TAC Chapter 83], addressing topics other than Sanitation; and

(3) 2 hours in methods of teaching in accordance with §83.120.

(e) To renew an instructor license, or an esthetician instructor, manicure instructor, esthetician/manicure instructor or eyelash extension instructor specialty license that expires on or after September 1, 2012, a licensee must complete a total of 4 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 1 hour in Sanitation required under the Act and this chapter; and

(2) 3 hours in methods of teaching in accordance with §83.120.

(f) ~~[(g)]~~ For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.

(g) ~~[(h)]~~ A licensee may receive continuing education hours in accordance with the following:

(1) A licensee may not receive continuing education hours for attending the same course more than once.

(2) A licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.

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

(i) ~~[(j)]~~ To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Sanitation required under the Act and this chapter [46 TAC Chapter 83];

(2) the Act and this chapter [46 TAC Chapter 83], addressing topics other than Sanitation;

(3) the curriculum subjects listed in §83.120.

(j) ~~[(k)]~~ A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.

(k) ~~[(l)]~~ A provider shall pay to the department a continuing education record fee of \$5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record

fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.

(l) ~~[(m)]~~ Notwithstanding subsections (b) - (e) ~~[(f)]~~ a licensee may satisfy the continuing education requirement for renewal by completing one hour [two hours] of Sanitation in department-approved courses, if the licensee:

(1) is at least 65 years of age; and

(2) has held a cosmetology license for at least 15 years.

§83.26. *License Requirements--Renewals.*

(a) To renew a license, an applicant must:

(1) comply with applicable requirements of the Act and this chapter;

(2) submit a completed application on a department-approved form; and

(3) pay the applicable fee required under §83.80.

(b) In addition to the requirements of subsection (a), an applicant must complete the continuing education requirements under §83.25 to renew a license or certificate listed in §83.80(b)(1) - (5). ~~[an instructor license, manicure instructor specialty license, facial instructor specialty license, license, manicurist specialty license, facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate.]~~

~~[(c)] In addition to the requirements of subsection (a), to renew an examination proctor registration, a registrant must hold an active instructor license.]~~

(c) ~~[(d)]~~ To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act of cosmetology that requires a license under this chapter.

(d) ~~[(e)]~~ Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

~~[(f)] A student permit must be renewed prior to the expiration date of the student permit by submitting a completed application on a department-approved form.]~~

§83.31. *Licenses--License Terms.*

(a) The following licenses have a term of two (2) years:

(1) operator license;

(2) ~~[manicurist] specialty license--esthetician, manicurist, esthetician/manicurist, eyelash extension;~~

~~[(3) facialist specialty license;]~~

(3) ~~[(4)] [hair weaving] specialty certificate--hair weaving, hair braiding, wig, shampoo/conditioning;~~

~~[(5) hair braiding specialty certificate;]~~

~~[(6) wig specialty certificate;]~~

~~[(7) shampoo/conditioning specialty certificate;]~~

(4) ~~[(8)] instructor license;~~

(5) [(9)] [facial] instructor specialty license--esthetician, manicurist, esthetician/manicure, eyelash extension;

~~{(10) manicure instructor specialty license;}~~

(6) [(41)] booth rental (independent contractor) license;

(7) [(42)] beauty and specialty salon license;

(8) [(43)] dual shop license;

(9) [(44)] mobile shop license; and

(10) shampoo apprentice permit (non-renewable).

~~{(15) student permit.}~~

(b) The following licenses have a term of one (1) year:

(1) private beauty culture school license; and

(2) public secondary or postsecondary beauty culture school certificate. ~~;~~ and

~~{(3) examination proctor registration.}~~

(c) A student permit issued under this chapter does not expire.

~~{(e) A shampoo apprentice permit expires one (1) year from the date of issuance and is not renewable.}~~

§83.51. Initial Inspections--Inspection of Beauty Culture Schools Before Operation.

(a) Any new or relocated beauty culture school must be inspected and approved by the department before it may operate. Additionally, a beauty culture school that has changed ownership must be inspected and approved by the department but may continue to operate prior to inspection.

(b) The beauty culture school owner shall request an initial inspection from the department and pay the fee required by §83.80. ~~[In order for the department to schedule the initial inspection in a timely manner, the initial inspection request and fee should be submitted to the department no later than forty-five (45) calendar days prior to the opening date of the school.]~~

(c) Upon receipt of the owner's request and the fee, the department shall schedule the initial inspection date and notify the owner.

(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the beauty culture school meets or does not meet the minimum requirements of the Act and this chapter.

(e) For beauty culture schools that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.

(f) A beauty culture school that does not meet the minimum requirements on initial inspection must be reinspected. The beauty culture school owner must submit the request for reinspection along with the fee required by §83.80, before the department will perform the reinspection.

§83.70. Responsibilities of Individuals.

(a) Licensees are responsible for compliance with the health and safety standards of this chapter.

(b) A licensee shall be restricted to working in a cosmetology establishment licensed under this chapter.

(c) A licensee who leases space as an independent contractor on the premises of a cosmetology establishment to engage in any practice of cosmetology authorized under the Act must obtain a booth rental permit.

(d) Specialty certificate holders may only perform the practice authorized by the specialty certificate.

(e) Individual licenses and booth rental (independent contractor) licenses may ~~[must]~~ be posted at the licensee's work station in the public view or be made available in a notebook at the salon reception desk.

(f) A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license, certificate or permit.

(g) Licensees shall notify the department in writing of any name change within 30 days of the change.

(h) Licensees must notify the department not later than thirty (30) days following any change of address. The department may send all notices on other information required by applicable laws and rules to any licensee's last known mailing address on file with the department.

~~{(i) Cosmetology services may be performed on incapacitated or deceased persons provided that the appointment is made through the salon. Licensees must have their license in their possession while performing the service.}~~

(i) ~~[(j)]~~ Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and do not include lingerie or see-through fabric.

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.

(a) Each establishment must have a copy of the current law and rules book.

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) Salons may lease space to an independent contractor who holds a booth rental (independent contractor) license. The lessor to an independent contractor must maintain a list of all renters that includes the name of renter and the cosmetology license number of the renter. The lessor must supply the department inspector with a list of renters upon request.

(d) Each salon shall comply with the following requirements:

(1) a sink with hot and cold running water;

(2) an identifiable sign with the salon's name;

(3) a suitable receptacle for used towels/linen;

(4) one wet disinfectant soaking container;

(5) a clean, dry, debris-free storage area;

(6) a minimum of one covered trash container; and

(7) if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer ~~[a department-approved sterilizer].~~

(e) In addition to the requirements of subsection (d):

(1) beauty salons shall provide the following equipment for each licensee present and providing services:

(A) one working station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls. ~~;~~ and

~~[(D) one hand-held hair dryer or hood hair dryer, with or without chair.]~~

(2) manicure salons shall provide the following equipment for each licensee present and providing services:

- (A) one manicure table with light;
- (B) one manicure stool; and

(C) one professional client chair for each manicure station.

(3) esthetician [faeial] salons shall provide the following equipment for each licensee present and providing services:

- (A) one facial bed or chair [eouch/chair]; and
- (B) one mirror.

(4) combination esthetician [manicure/faeial] salons shall provide the following equipment:

- (A) the requirements for manicure salon; and
- (B) the requirements for esthetician [faeial] salon.

(5) eyelash extension salons shall provide the following equipment for each licensee present and providing services:

- (A) one facial bed or massage table;
- (B) one lighted magnifying glass; and
- (C) one stool or chair.

(6) [(5)] wig salons shall provide the following equipment for each licensee present and providing services:

- (A) one mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;
- (B) one wig dryer; and
- (C) two canvas wig blocks.

(7) [(6)] hair weaving salons shall provide the following equipment for each licensee present and providing services:

- (A) one work station;
- (B) one styling chair; and
- (C) a sufficient amount of shampoo bowls for licensees providing hair weaving services. ~~and~~

~~[(D) one chair dryer/handheld dryer for each three licensees providing hair weaving services.]~~

(8) [(7)] hair braiding salons shall provide the following equipment for each licensee present and providing services:

- (A) one work station; and
- (B) one styling chair.

(9) [(8)] Dual shops shall:

- (A) comply with all requirements of the Act and this chapter applicable to beauty salons;
- (B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops; and
- (C) if the shop is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more:

(i) not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(ii) remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

(f) All booth rental (independent contractor) licensees must have the following items:

- (1) one wet disinfectant soaking container;
- (2) a clean, dry, debris-free storage area;
- (3) a suitable receptacle for used towels/linen; and
- (4) a current law and rules book.

(g) In addition to the requirements in subsection (f), booth rental (independent contractor) licensees must have the following items.

(1) If practicing in a beauty salon, one work station and one styling chair.

(2) If practicing in an esthetician [a faeial] salon, one facial bed [eouch] or [faeial] chair and one mirror, wall hung or hand held.

(3) If practicing in a manicure salon, one manicure table with a light, one manicure stool, and one chair, professional in appearance.

(4) If practicing in an eyelash extension salon, one facial bed or massage table, one stool or chair and one lighted magnifying glass.

(h) Booth rental (independent contractor) licensees must comply with all state and federal laws relating to independent contractors.

(i) A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology license.

(j) Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

§83.72. Responsibilities of Beauty Culture Schools.

(a) Each establishment must have a copy of the current law and rules book.

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) Any alterations of a cosmetology establishment's floor plan must be done in accordance with this chapter and the Act.

(d) The curricula shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection.

(e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor curriculum of a beauty culture school.

(f) Schools must have not less than one full-time licensed instructor ~~on staff and~~ on duty ~~during business hours~~ for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school on a full-time basis. The student-instructor shall at all times work under the direct supervision of the full-time licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all cur-

riculum activities No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(g) Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(h) Schools ~~may~~ must use a time clock to track student hours and maintain a daily record of attendance ~~or schools may use credit hours [with each student personally punching the time clock].~~

(i) Schools using time clocks ~~[Beauty culture schools]~~ shall post a sign at the time clock that states the following department requirements:

(1) Each student must personally clock in/out for himself/herself. ~~[No student may allow another person to clock in or out on behalf. of that student.]~~

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.

(3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoking ~~[smoke]~~ breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

(j) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents; however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(k) A school must properly account for the credit ~~[clock]~~ hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit ~~[hours]~~ that is ~~[are]~~ not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum, withdraws, or is terminated:

(1) daily record of attendance;

(2) ~~[student clock hours as demonstrated by]~~ the following documents if a time clock is used:

(A) time clock record(s);

(B) time clock failure and repair record(s); and

(C) field trip records in accordance with §83.120(d)(5);

~~[and]~~

~~{(3) practical applications of the curriculum; and}~~

(3) ~~[(4)]~~ all other relevant documents that account for a student's credit ~~[accrued clock hours and practical applications]~~ under this chapter.

(l) Schools using time clocks shall, at ~~[At]~~ least one time per month~~;~~ ~~[schools shall]~~ submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall

include all hours accrued at the school. ~~[Upon graduation, a school shall affirm in an electronic manner and format prescribed by the department that a student completed the practical applications, if any, prescribed by the department's minimum standards or the school's published standards.]~~ Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(m) Schools using credit hours shall, at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(n) Schools changing from clock hours to credit hours shall submit to the department their curriculum for approval before making the change.

(o) ~~[(m)]~~ Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a cosmetology curriculum for 30 days.

(p) ~~[(n)]~~ Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(q) ~~[(o)]~~ All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(r) ~~[(p)]~~ A private cosmetology school or post-secondary school may provide cosmetology instruction to public high school students by contracting with the school district [Texas Education Agency] and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract [at a private cosmetology school in accordance with a contract between the private cosmetology school and the Texas Education Agency] is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(s) ~~[(q)]~~ Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(t) ~~[(r)]~~ Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct a minimum of ten students enrolled at the school:

(1) if using a time clock to track student hours, one day/date formatted computer time clock;

(2) desks and chairs or table space for each student in attendance;

(3) medical dictionary;

(4) a television or projector and a VCR or DVD player;

(5) a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(6) a suitable receptacle for used towels/linens;

(7) 2 covered trash cans in lab area; and

(8) one large wet disinfectant soaking container.

(9) If offering the operator curriculum the following equipment must be available in adequate number for student use:

(A) shampoo bowl and shampoo chair;

(B) heat processor or hand-held hair dryer and heat cap or therapeutic light;

(C) cold wave rods;

(D) thermal iron (electric or non-electric);

(E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic);

(F) mannequin with sufficient hair, with table or attached to styling station;

(G) professional hand clippers;

(H) professional hand held dryer;

(I) manicure table and stool;

(J) facial chair;

(K) lighted magnifying glass;

(L) woods lamp;

(M) dry sanitizer;

(N) steamer machine;

(O) brush machine for cleaning;

(P) vacuum machine;

(Q) high frequency machine for disinfection, product penetration, stimulation;

(R) galvanic machine for eliminating encrustations, product penetration;

(S) paraffin bath and paraffin wax;

(T) facial bed;

(U) mannequin head; and

(V) wet sanitizer.

(10) If offering the esthetician curriculum the following equipment must be available in adequate number for student use:

(A) facial chair;

(B) lighted magnifying glass;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer machine;

(F) brush machine for cleaning;

(G) vacuum machine;

(H) high frequency machine for disinfection, product penetration, stimulation;

(I) galvanic machine for eliminating encrustations, product penetration;

(J) paraffin bath and paraffin wax;

(K) facial bed;

(L) mannequin head; and

(M) wet sanitizer.

(11) If offering the manicure curriculum the following equipment must be available in adequate number for student use:

(A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer;

(B) complete manicure table with light;

(C) client chair;

(D) student stool or chair;

(E) whirlpool foot spa;

(F) electric nail file;

(G) UV light curing system;

(H) paraffin bath and paraffin wax; and

(I) air brush system.

(12) If offering the esthetician/manicure curriculum, the equipment required for the esthetician curriculum as listed in paragraph (10); and the equipment required for the manicure curriculum as listed in paragraph (11); including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(13) If offering the eyelash extension curriculum; the following equipment must be available in adequate number for student use:

(A) facial bed or massage table;

(B) stool or chair;

(C) lighted magnifying glass;

(D) mannequin head;

(E) wet sanitizer; and

(F) dry sanitizer.

{(1) desks and chairs or table space for a minimum of 10 students (plus one desk or chair or table space for additional students enrolled an in attendance per theory class);}

{(2) charts covering, bones, muscles, nerves, skin, and nails;}

{(3) medical dictionary;}

{(4) minimum visual aid requirements: television and VCR or DVD;}

{(5) a dispensary of not less than 50 contiguous square feet with a double sink with hot and cold running water and space for storage and dispensing of supplies and equipment;}

{(6) six shampoo bowls and six shampoo chairs;}

{(7) eight heat processors or hand-held hair dryers;}

{(8) one heat cap or therapeutic light;}

{(9) eight dozen cold wave rods;}

{(10) three electric irons, or marcel stoves and irons;}

{(11) sixteen styling stations covered with a non-porous material that can be cleaned and disinfected, with mirror, and 16 styling chairs (swivel or hydraulic);}

{(12) twelve mannequins with sufficient hair with table or attached to styling stations;}

- ~~{(13) one day/date formatted computer time clock;}~~
- ~~{(14) one pair of professional hand clippers;}~~
- ~~{(15) three professional hand held dryers;}~~
- ~~{(16) four manicure tables and four stools;}~~
- ~~{(17) a suitable receptacle for used towels/linen;}~~
- ~~{(18) four covered trash cans in lab area;}~~
- ~~{(19) one large wet disinfectant soaking container;}~~
- ~~{(20) a clean, dry, debris-free storage area;}~~
- ~~{(21) if teaching facial courses:}~~
 - ~~{(A) facial chair;}~~
 - ~~{(B) magnifying lamp;}~~
 - ~~{(C) woods lamp;}~~
 - ~~{(D) dry sanitizer;}~~
 - ~~{(E) steamer;}~~
 - ~~{(F) brush machine for cleaning;}~~
 - ~~{(G) vacuum machine that includes spray device;}~~
 - ~~{(H) high frequency for disinfection, product penetration, stimulation;}~~
 - ~~{(I) galvanic for eliminating encrustations, product penetration;}~~
 - ~~{(J) paraffin bath and paraffin wax; and}~~
- ~~{(22) if providing manicure or pedicure nail services, a department-approved sterilizer.}~~

~~(u) [(s)] Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.~~

~~§83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.~~

~~(a) A student desiring to transfer from one school to another must withdraw from the first school prior to the transfer. Enrollment in two or more schools of cosmetology at the same time is prohibited.~~

~~(b) A student transferring to a school who desires to claim credit [hours and practical applications] earned must inform the school transferred to prior to enrollment of his/her prior attendance and must furnish to that school and the department a record of credit [hours] claimed [and practical applications completed]. This record may be in the form of a transcript from the prior school or an extract from records of the department.~~

~~{(c) A student may not graduate until all previously accrued hours, upon re-entry to that school or transferring from another school, have been reported.}~~

~~{(d) A student may withdraw from school at any time by notifying the school in writing.}~~

~~(c) [(e)] Upon withdrawal, and provided that the agreed tuition and fees have been tendered, a student is entitled to an official transcript of credit earned [hours taken and practical application performed] at the school withdrawn from. The transcript [and practical applications] must be ready for pickup or, if mailed, postmarked within ten calendar days of the school's receipt of notice of withdrawal. A copy of the transcript [and practical applications] must be kept in the student's file~~

for 48 months and the copy must be made available at the request of the department.

~~(d) [(f)] A student who withdraws from a cosmetology school is entitled to a refund in accordance with Texas Occupations Code, Chapter 1602.~~

~~(e) [(g)] Withdrawal or termination [during the first week] shall be defined by the number of hours scheduled according to the enrollment agreement or contract the student has signed with the school or other document acceptable to the department and not the clock hours the student has earned during class attendance. [If scheduled clock hours are 40 hours per week, then the week is defined to be 40 clock hours; for part time students, the amount of scheduled clock hours per week defines the week.}~~

~~{(h) Enrollment is defined as the time elapsed between the actual starting date and the date of the student's last day of attendance.}~~

~~(f) [(t)] If a school closes or ceases operation before the class credit is earned [hours are completed], the student is entitled to a tuition refund in accordance with Texas Occupations Code, Chapter 1602.~~

~~(g) [(j)] Any student of an out-of-state private or public cosmetology school may submit a request to the department to transfer the completed credit [hours of instruction] to a Texas school. A transcript must be submitted on the prescribed form and certified by the school in which the instruction was given. Portions of the curricula of the department not taught in another state must be taken in an approved Texas school prior to taking the Texas examination.~~

~~(h) [(k)] A student enrolled for a specialty course may withdraw and transfer hours acquired to the operator course not to exceed the amount of hours of that subject in the operator curriculum. Students enrolled in the operator course may withdraw and transfer up to the maximum specialty hours within the operator curriculum for that course. [Once a license is obtained, hours may not be transferred to another course.}~~

~~§83.80. Fees.~~

- ~~(a) Application fees.~~
 - ~~(1) Operator License--\$53~~
 - ~~(2) [Facialist] Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension--\$53~~
 - ~~{(3) Manicurist Specialty License--\$53}~~
 - ~~(3) [(4)] [Hair Weaving] Specialty Certificate--Hair Weaving, Hair Braiding, Wig, Shampoo/Conditioning-- \$53~~
 - ~~{(5) Hair Braiding Specialty Certificate--\$53}~~
 - ~~{(6) Wig Specialty Certificate--\$53}~~
 - ~~{(7) Shampoo-Conditioning Specialty Certificate--\$53}~~
 - ~~(4) [(8)] Student Permit--\$25 (includes law and rules book fee)~~
 - ~~(5) [(9)] Instructor License--\$70~~
 - ~~(6) [(10)] [Facial] Instructor Specialty License--Esthetician, Manicurist, Esthetician/Manicure, Eyelash Extension-- \$70~~
 - ~~{(11) Manicure Instructor Specialty License--\$70}~~
 - ~~{(12) Examination Proctor Registration--\$25}~~
 - ~~(7) [(13)] Beauty and specialty salons--\$106~~
 - ~~(8) [(14)] Booth Rental (Independent Contractor) License--\$67~~

- (9) ~~[(15)]~~ Private Beauty Culture School--\$500
- (10) ~~[(16)]~~ Dual Shop--\$130
- (11) ~~[(17)]~~ Mobile Shop--\$106
- (12) ~~[(18)]~~ Temporary Beauty Salon, Specialty Salon, or Dual Shop License--\$20
- (b) Renewal fees.
 - (1) Operator License--\$53
 - (2) ~~[Facialist]~~ Specialty License--~~Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension--~~ \$53
 - ~~[(3) Manicurist Specialty License--\$53]~~
 - (3) ~~[(4) [Hair Weaving]~~ Specialty Certificate--~~Hair Weaving, Hair Braiding, Wig, Shampoo/Conditioning--~~ \$53
 - ~~[(5) Hair Braiding Specialty Certificate--\$53]~~
 - ~~[(6) Wig Specialty Certificate--\$53]~~
 - ~~[(7) Shampoo-Conditioning Specialty Certificate--\$53]~~
 - ~~[(8) Student Permit--No charge.]~~
 - (4) ~~[(9)]~~ Instructor License--\$70
 - (5) ~~[(10)] [Facial]~~ Instructor Specialty License--~~Esthetician, Manicurist, Esthetician/Manicure, Eyelash Extension--~~ \$70
 - ~~[(11) Manicure Instructor Specialty License--\$70]~~
 - ~~[(12) Examination Proctor Registration--\$25]~~
 - (6) ~~[(13)]~~ Beauty and specialty salons--\$69
 - (7) ~~[(14)]~~ Booth Rental (Independent Contractor) License--\$67
 - (8) ~~[(15)]~~ Private Beauty Culture School--\$200
 - (9) ~~[(16)]~~ Dual Shop--\$100
 - (10) ~~[(17)]~~ Mobile Shop--\$69
- (c) License by Reciprocity or Endorsement--\$100
- (d) Inactive License Status
 - (1) Change from active status to inactive status--no charge.
 - (2) Renewal of license on inactive status--renewal fees as stated in §83.80(b).
 - (3) Change from inactive status to active status--\$25.
- (e) Revised/Duplicate License/Certificate/Permit/Registration--\$25
- (f) Law and Rules book--\$14
- (g) Inspection Fees (for each occurrence)[-]
 - (1) School (public and private)--\$200
 - (2) Risk-based Inspection of establishments--\$150
- (h) Verification of license, permit, or certificate to other states--\$15[-]
- (i) Student transcript fee--\$5
- ~~[(j) Registered Examination Proctor Department training course--\$50]~~
- (j) ~~[(k)]~~ Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(k) ~~[(4)]~~ All fees are nonrefundable, except as otherwise provided by law or commission rule.

§83.100. Health and Safety Definitions.

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

(1) Chlorine bleach solutions--A chemical used to destroy bacteria and to disinfect implements and non-porous surfaces; solution should be mixed fresh at least once per day. As used in this chapter, chlorine bleach solutions fall into three categories based on concentration and exposure time:

(A) Low level disinfection (100 - 200 ppm)--Add two teaspoons household (5.25%) bleach to one gallon water. Soak 10 minutes minimum.

(B) High level disinfection (1,000 ppm)--Add one-third (1/3) cup household (5.25%) bleach to one gallon water. Soak 20 minutes minimum.

(C) Blood and body fluid cleanup and disinfection (5,000 ppm)--Add one and three-quarters (1 3/4) cups household (5.25%) bleach to one gallon water. Also referred to as a 10% bleach solution.

(2) Clean or cleansing--Washing with liquid soap and water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection.

(3) Disinfect or disinfection--The use of chemicals to destroy pathogens on implements and other hard, non-porous surfaces to render an item safe for handling, use, and disposal.

(4) Disinfectant--In this chapter, one of the following department-approved chemicals:

(A) an EPA-registered bactericidal, fungicidal, and virucidal disinfectant used in accordance with the manufacturer's instructions;

(B) a chlorine bleach solution used in accordance with this chapter; or

(C) an Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90%.

(5) EPA-registered bactericidal, fungicidal, and virucidal disinfectant--When used according to manufacturer's instructions, a chemical that is a low-level disinfectant used to destroy bacteria and to disinfect implements and non-porous surfaces.

(6) Isopropyl or Ethyl alcohol--Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90% are chemicals that are a low-level disinfectant used to destroy bacteria and to disinfect implements.

(7) Multi-use items--Items constructed of hard materials with smooth surfaces such as metal, glass, or plastic typically for use on more than one client. The term includes but is not limited to such items as clippers, scissors, combs, nippers, tweezers, and some nails files.

(8) Single-use items--Porous items made or constructed of cloth, wood, or other absorbent materials having rough surfaces usually intended for single use including but not limited to such items as tissues, orangewood sticks, cotton balls, thread, surgical tape, extension pads, some buffer blocks, and gauze.

(9) Sterilize or sterilization--To eliminate all forms of ~~[make free from live]~~ bacteria or other microorganisms by use of an

autoclave or~~[-]~~ dry heat ~~[or ultraviolet light]~~ sterilizer ~~[that is listed with the United States Food and Drug Administration].~~

(10) Sanitize or sanitization--To reduce the number of microorganisms to a safe level by use of an ultraviolet sanitizer.

§83.102. Health and Safety Standards--General Requirements.

(a) All cosmetology establishments and licensees shall utilize clean and disinfected equipment, tools, implements, and supplies in accordance with this chapter, and shall employ good hygiene habits while providing cosmetology services.

(b) A licensee may not perform services on a client if the licensee has reason to believe the client has a contagious condition such as head lice, nits, ringworm, conjunctivitis; or inflamed, infected, broken, raised or swollen skin or nail tissue; or an open wound or sore in the area to be serviced.

(c) Multi-use equipment, implements, tools or materials not addressed in this chapter shall be cleaned and disinfected before use on each client. Except as otherwise provided in this chapter, chairs and dryers do not need to be disinfected prior to use for each client.

(d) Single-use equipment, implements, tools or porous items not addressed in this rule shall be discarded after use on a single client.

(e) Electrical equipment that cannot be immersed in liquid shall be wiped clean and disinfected prior to each use on a client.

(f) All clean and disinfected implements and materials when not in use shall be stored in a clean, dry, debris-free environment including but not limited to drawers, cases, tool belts, rolling trays, or hung from hooks. They must be stored separate from soiled implements and materials. Ultraviolet electrical sanitizers are permissible for use as a dry storage container. Non-cosmetology related supplies must be stored in separate drawers or locations.

(g) Shampoo bowls, and manicure tables shall be disinfected prior to use for each client.

(h) Floors in cosmetology establishments shall be thoroughly cleaned each day. Hair cuttings must be swept up and deposited in a closed receptacle after each hair cut.

(i) All trash containers must be emptied daily and kept clean by washing or using plastic liners.

(j) Hand washing facilities, including hot and cold running water must be provided for employees.

(k) Clean towels shall be used on each client. Towels must be washed in hot water and chlorine bleach.

(l) Soiled towels shall be removed after use on each client and deposited in a suitable receptacle.

(m) Each cosmetology establishment shall keep all products used in the conduct of their business properly labeled in compliance with OSHA requirements.

(n) Hair cutting and shampoo capes shall be kept clean. A clean (one-use) cape shall be used for each client or a sanitary neck strip or towel shall be used to keep the capes from coming into direct contact with the client's neck.

§83.104. Health and Safety Standards--Esthetician [Facial] Services.

(a) Cosmetologists and estheticians ~~[facialists]~~ shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client. Gloves shall be worn during any type of extraction.

(b) Equipment, implements, tools and materials shall be properly cleaned and disinfected after ~~[prior to]~~ servicing each client in accordance to this rule.

(c) Facial chairs and beds, including headrest for each, shall be cleaned and disinfected after ~~[prior to]~~ providing service to each client. The chair shall be made of or covered in a ~~[non-porous]~~ material that can be disinfected.

(d) After each client, multiple use implements such as metal tweezers and comedone extractors ~~[the following implements]~~ shall be cleaned and disinfected~~[- tweezers and comedone extractors].~~

(e) The following implements are single-use items and shall be discarded in a trash receptacle after use: cotton pads, cotton balls, gauze, wooden applicators, disposable gloves, tissues, thread, disposable wipes, lancets, fabric strips and other items used for a similar purpose as one or more of the items listed above.

(f) The following items that are used during services shall be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas that contact skin or products from multi-use containers, sponges and other items used for a similar purpose as one or more of the items listed above.

(g) Items subject to possible cross contamination such as creams, cosmetics, astringents, lotions, removers, waxes, moisturizers, masks, ~~[and]~~ oils and other preparations shall be used in a manner so as not to contaminate the remaining product. Applicators shall not be re-dipped in product. Permitted procedures to avoid cross contamination are:

(1) Disposing of the remaining product before beginning services on each client; or

(2) Using a single-use disposable implement to apply product and disposing of such implement after use; or

(3) Using an applicator bottle to apply the product.

§83.105. Health and Safety Standards--Temporary Hair Removal [Waxing] Services.

(a) Cosmetologists and estheticians ~~[facialists]~~ shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) Cosmetologists and estheticians ~~[facialists]~~ shall clean the areas of the client's body on which the service is to be administered.

(c) Cosmetologists and estheticians ~~[facialists]~~ performing temporary hair removal [waxing] services involving the use of depilatories, preparations or tweezing techniques shall dispose of after each use all products or single use items [wax] that have [has] been in contact with a client's skin. ~~[Wax may not be reused under any circumstances.]~~

(d) All wax pots shall be cleaned and disinfected in accordance with manufacturer's recommendations. No applicators shall be left standing in the wax at any time and wax may not be reused under any circumstances.

(e) Thread shall be stored in a sealed bag or covered container until ready to use and shall be kept in a clean, dry, debris-free storage area.

(f) All multi-use items shall be properly cleaned, disinfected and sterilized or sanitized prior to each service, in accordance with this chapter.

§83.106. Health and Safety Standards--Manicure and Pedicure Services.

(a) Cosmetologists and manicurists shall clean their hands with soap and water or a hand sanitizer prior to performing any services.

(b) Cosmetologists and manicurists shall clean the areas of the client's body on which the service is to be administered.

(c) All metal manicure and pedicure tools shall be properly cleaned, disinfected and sterilized or sanitized prior to each service, in accordance with this chapter, regardless of the tool's multiuse for only a single client or for multiple clients.

(d) After each client, the following implements shall be cleaned, disinfected and sterilized or sanitized in accordance with the rule: metal pusher and files, cuticle nipper and scissors, metal tweezers, finger and toe nail clippers, and electric drill bits.

(e) The following implements are single-use items and shall be discarded after use: orangewood sticks, cotton balls, nail wipes and disposable towels.

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and toe pumice, exfoliating block (rough surfaced or absorbent materials) shall be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with Isopropyl or ethyl alcohol, an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, or a or a high level chlorine bleach solution in accordance with this chapter. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) The following materials that are used during a manicure and pedicure shall be replaced with new or clean articles for each client: terry cloth towels, finger bowls and spatulas that contact skin or skin products from multi-use containers.

§83.112. Health and Safety Standards--Prohibited Products or Practices.

(a) Licensees may not use any of the following substances or products in performing cosmetology services:

- (1) Methyl Methacrylate Liquid Monomers, a.k.a., MMA.
- (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses, e.g., credo blades.
- (3) Alum or other astringents in stick or lump form. (Alum or other astringents in powder or liquid form are acceptable.)
- (4) Fumigants such as formalin (formaldehyde) tablets or liquids.

(b) Possession on licensed premises of any item listed in this section is a violation under this chapter.

(c) The use of any product, preparation or procedure that comes into contact with or penetrates the dermis layer of the skin is prohibited.

§83.115. Health and Safety Standards--Eyelash Extension Application Services.

(a) A licensee offering the eyelash extension application service shall wash his or her hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client. Disposable gloves shall be worn during the application of the eyelashes.

(b) Equipment, implements, and materials shall be properly cleaned and disinfected prior to providing services.

(c) A clean head drape shall be used for each client and shall be properly cleaned or disposed of after use.

(d) Chairs and beds, including headrests, shall be cleaned and disinfected after providing services to each client. The chair and beds shall be made of or covered in a non-porous material that can be disinfected.

(e) After each client, the following implements shall be cleaned and disinfected: tweezers, nasal aspirator or electric eyelash dryer and other items used for a similar purpose.

(f) The following implements are single-use items and shall be discarded in a trash receptacle after use: disposable gloves, tissues, disposable wipes, fabric strips, surgical tape, eye pads, extensions, cotton swabs, face mask, brushes, extension pads and other items used for a similar purpose.

(g) The following items that are used during services shall be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, spatulas that contact skin or products from multi-use containers.

(h) A licensee shall use only properly labeled semi-permanent glue and semi-permanent glue remover that must be used according to the manufacturer's instructions.

(i) Extensions must be stored in a sealed bag or covered container and shall be kept in a clean dry, debris-free storage area.

§83.120. Technical Requirements--Curriculum.

(a) Operator Curricula
Figure: 16 TAC §83.120(a)

(b) Specialist Curricula
Figure: 16 TAC §83.120(b)

(c) Instructor Curricula
Figure: 16 TAC §83.120(c)

~~{(d) Practical Applications of the Curriculum}~~
~~{Figure: 16 TAC §83.120(d)}~~

(d) ~~{(e)}~~ Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hours operator course;

(B) a maximum of 50 hours out of the 1,000 hours operator course; ~~{-}~~

(C) a maximum of 30 hours for the manicure course;

(D) a maximum of 30 hours for the esthetician ~~{facial}~~ course; ~~{and}~~

(E) a maximum of 60 hours for the esthetician/manicurist course;

(F) a maximum of 15 hours for the eyelash extension course;

(G) ~~{(E)}~~ a maximum of 30 hours for students taking the 750 hour instructor course; ~~{and}~~ ~~{-}~~

(H) a maximum of 20 hours for students taking the 500 hour instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required.

~~{(f) The changes in this section, as adopted by the commission on June 14, 2006, shall apply to students who enroll in a cosmetology school on or after September 1, 2006.}~~

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 November 23, 2011.

TRD-201105187

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 8, 2012

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



16 TAC §83.75

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

The repeal is proposed under Texas Occupations Code, Chapters 51, 1601, 1602, and 1603 which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the proposed repeal.

§83.75. *Responsibilities of Registered Examination Proctors.*

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 November 23, 2011.

TRD-201105188

William H. Kuntz, Jr.

Executive Director

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CHAPTER 90. IDENTITY RECOVERY SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§90.10, 90.20, 90.21, 90.23, 90.24, 90.40 - 90.42, 90.70, 90.71

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 90, §§90.10, 90.20, 90.21, 90.23, 90.24, 90.40 - 90.42, and 90.70; and adds new §90.71, regarding the Identity Recovery Service Contract Providers and Administrators program.

Senate Bill 1169, 82nd Legislature, Regular Session (2011), amended Texas Occupations Code, Chapter 1304, relating to the regulation of providers, administrators and sellers of service contracts, and Texas Occupations Code, Chapter 1306, relating to the regulation of providers, administrators and sellers of identity recovery service contracts. The proposed rules are necessary to implement the changes made by Senate Bill 1169 to Texas Occupations Code, Chapter 1306.

The proposed amendments are also necessary to align these rules under 16 TAC Chapter 90 with the existing and proposed rules for the Service Contract Providers and Administrators program under 16 TAC Chapter 77. The proposed rules for the Service Contract Providers and Administrators program are published separately in this issue of the *Texas Register*.

In addition, as part of this proposal, the Department seeks public comments on how to implement through agency rules the new statutory provision under Texas Occupations Code §1306.111(c), relating to telemarketing. Public comments received in response to this request will assist the Department in drafting a proposed rule that may be published and open for additional public comment in a future proposed rulemaking.

§90.10. *Definitions.*

The proposal amends §90.10, Definitions. The proposal adds a new definition for "qualified financial institution" as used in Texas Occupations Code §1306.101 and in §90.42, regarding certificates of deposit and letters of credit issued by a qualified financial institution.

The proposal also deletes the current rule definition of "identity recovery service contract seller" or "seller," since a slightly different definition of seller has been added to the statute. All entity definitions - provider, administrator, and seller - are now contained in the statute.

§90.20. *Registration Requirements--Provider.*

The proposal amends §90.20, Registration Requirements--Provider. The proposal updates the language in subsection (a) to include references to identity recovery service contracts "sold or issued" in this state to reflect the updated statutory language. The proposal changes the requirement under subsection (c) that each controlling person of a provider must submit a biographical affidavit and instead requires the controlling person to submit a personal information form. This change reflects the statutory changes, and the new form is more streamlined for the provider's controlling persons to complete.

The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. This provision is already addressed

under Texas Occupations Code §1306.052, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the identity recovery service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the department denying a registration if the applicant or its controlling person had violated Texas Occupations Code, Chapter 1306, the rules, or an order issued by the Commission or Executive Director. This provision is already addressed under Texas Occupations Code §1306.052. It is not necessary to repeat the provision in these rules.

§90.21. Registration Renewal Requirements--Provider.

The proposal amends §90.21, Registration Renewal Requirements--Provider. The proposal amends subsection (c)(2) to reflect the statutory changes and to align these rules with the proposed rules for the Service Contract Providers and Administrators program under 16 TAC Chapter 77. Except as provided under new subsection (d), instead of requiring every controlling person to fill out a personal information form or a "no change form" every year, a controlling person will only have to complete a new personal information form if there have been any changes to the information the controlling person previously submitted or if the controlling person has not previously submitted a personal information form. In addition, the applicant must indicate on the registration renewal form every year if there has or has not been any change in the information previously provided by any controlling person to the Department. The "no change form" is proposed to be deleted.

Due to the statutory changes under Texas Occupations Code §1306.052 and §1306.053, the proposal adds a transition provision regarding renewals under new subsection (d). At the first registration renewal on or after March 1, 2012, each controlling person of a provider must complete a personal information form as prescribed by the Executive Director. This form replaces the former biographical affidavit. By completing the personal information form, all controlling persons of all providers will have submitted the same form and answered the same questions. It will give the Department a baseline for any future changes for all controlling persons. At any subsequent renewals, a controlling person will only have to complete a new personal information form if there have been any changes to the information the controlling person previously submitted or if the controlling person has not previously submitted a personal information form.

The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. The provision is already addressed under Texas Occupations Code §1306.052, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the identity recovery service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the department denying a registration if the applicant or its controlling person had violated Texas Occupations Code, Chapter 1306, the rules, or an order issued by the Commission or Executive Director. The provision is already addressed under Texas Occupations Code §1306.052. It is not necessary to repeat the provision in these rules.

§90.23. Registration Requirements--Administrator.

The proposal amends §90.23, Registration Requirements--Administrator. The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. The provision is already addressed under Texas Occupations Code §1306.052, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the identity recovery service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the department denying a registration if the applicant or its controlling person had violated Texas Occupations Code, Chapter 1306, the rules, or an order issued by the Commission or Executive Director. The provision is already addressed under Texas Occupations Code §1306.052. It is not necessary to repeat the provision in these rules.

§90.24. Registration Renewal Requirements--Administrator.

The proposal amends §90.24, Registration Renewal Requirements--Administrator. The proposal deletes current subsection (d), which addressed denying or revoking a registration if the applicant falsifies information on the application. The provision is already addressed under Texas Occupations Code §1306.052, Texas Government Code §2005.052(a), and 16 TAC §60.23(a), which all apply to the identity recovery service contract provider and administrator program. It is not necessary to repeat the provision in these rules.

The proposal deletes current subsection (e), which addressed the Department denying a registration if the applicant or its controlling person had violated Texas Occupations Code, Chapter 1306, the rules, or an order issued by the Commission or Executive Director. The provision is already addressed under Texas Occupations Code §1306.052. It is not necessary to repeat the provision in these rules.

§90.40. Financial Security--General Requirements.

The proposal amends §90.40, Financial Security--General Requirements. The proposal adds clarifying language to subsection (b). It also amends subsection (c) and deletes current subsection (d) to conform these rules with those under the Service Contract Providers and Administrators program under 16 TAC Chapter 77. In addition, the proposal updates the language in relettered subsections (d) and (e) (formerly subsections (e) and (f)) to include references to identity recovery service contracts "sold or issued" in this state to reflect the updated statutory language.

§90.41. Financial Security--Reimbursement Insurance Policy.

The proposal amends §90.41, Financial Security--Reimbursement Insurance Policy. The proposal removes the reference to "or equivalent language" under subsection (b)(1). The provider must use the Identity Recovery Service Contract Provider Texas Endorsement that is prescribed by the Executive Director.

§90.42. Financial Security--Funded Reserve Account and Security Deposit.

The proposal amends §90.42, Financial Security--Funded Reserve Account and Security Deposit. The proposal updates the requirements under subsection (a) to include submission of the audited financial statements as prescribed under Texas Occupations Code §1306.101(b) and to add a reference to the funded reserve calculation form. The proposal updates subsection (b) to conform these rules with those under the Service Contract

Providers and Administrators program under 16 TAC Chapter 77. The proposal updates the list of acceptable forms of security deposit under subsection (c) to reflect the statutory requirements. The proposal adds a new subsection (d) to reflect the additional financial reports that the provider may be required to submit in accordance with Texas Occupations Code §1306.101(b).

§90.70. Responsibilities of Registrant--Provider and Administrator.

The proposal makes several changes to §90.70, including the title of this section, "Responsibilities of Providers and Administrators."

The proposal removes the effective date under §90.70(a) to conform these rules with the proposed rules under the Service Contract Providers and Administrators program under 16 TAC Chapter 77.

The proposal amends §90.70(d) by updating the list of information that providers and administrators must disclose to consumers and that reflect the new statutory requirements regarding identity recovery service contract cancellations and refunds.

The proposal includes new language under §90.70(e) and (f) to conform these rules with the proposed rules under the Service Contract Providers and Administrators program under 16 TAC Chapter 77. These changes recognize that the seller may provide a copy of the contract and the receipt at the point of sale; however, the provisions still keep the ultimate responsibility on the provider. Texas Occupations Code §1306.104 requires that the "provider" provide the identity recovery service contract holder with the receipt and the copy of the contract "within a reasonable period after the date of purchase."

In addition, as a result of the statutory changes regarding cancellations and refunds under Texas Occupations Code §1306.1081, the current 45-day time frame in §90.70(e) and (f) has been changed. Texas Occupations Code §1306.1081 addresses whether the consumer can get a full or prorated refund based on if the consumer cancels before or after the "31st day after the date of purchase." The revised rule language provides that a copy of the contract and receipt must be provided to the consumer within a reasonable amount of time after the date of purchase to still allow the contract holder to cancel the contract and receive a full refund.

The proposal deletes §90.70(g), Responsibility for Marketing and Sales Activities, since Texas Occupations Code §1306.1031 addresses this issue.

The proposal deletes §90.70(k), (l), and (m) to conform these rules with the proposed rules under the Service Contract Providers and Administrators program under 16 TAC Chapter 77. The proposal replaces these provisions with new provisions under new §90.71, Responsibilities of Providers Ceasing Operations or Discontinuing Business.

The proposal adds a new §90.70(j) that provides examples of the prohibited acts under Texas Occupations Code §1306.111(a), which addresses making a false, deceptive or misleading statement or omitting a material statement in any identity recovery service contract, literature or written communication. This list of examples includes failure to make the required disclosures in the identity recovery service contracts, failure to honor the terms of the identity recovery service contracts, and failure to pay eligible claims under the terms of the identity recovery service contracts. The list under subsection (j) is not exhaustive.

§90.71. Responsibilities of Providers Ceasing Operations or Discontinuing Business.

The proposal adds a new §90.71, Responsibilities of Providers Ceasing Operations or Discontinuing Business. This provision consolidates into one rule the provisions formerly located under §90.70(k), (l), and (m). The new section also incorporates statutory requirements about these providers maintaining records and financial security to consolidate the requirements into one rule. This new rule conforms to the proposed new rule under the Service Contract Providers and Administrators program under 16 TAC Chapter 77. The new section also recognizes that events such as bankruptcy or receivership may prevent or prohibit a provider from strict compliance with this section.

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

Mr. Kuntz also has determined that for each year of the first five-year period the statute and the proposed amendments and new rules are in effect, the public benefit will be additional consumer protections for identity recovery service contract holders and more streamlined requirements for identity recovery service contract providers. For identity recovery service contract holders: (1) the financial security ensuring the identity recovery service contracts has been strengthened; (2) there are additional consumer disclosures required; (3) there are additional cancellation and refund rights for identity recovery service contract holders; and (4) specific information will be provided to the Department regarding companies that cease operations in Texas. For identity recovery service contract providers: (1) the biographical affidavit has been eliminated and replaced with a simplified and streamlined personal information form; (2) the requirements for providers ceasing operations in Texas have been clarified and simplified; and (3) where possible, the proposal has eliminated provisions that are already located in the statute.

There is no anticipated adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed. Any possible economic impact would be a result of the statute not the proposed amendments and new rules.

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

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

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 1306, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement and administer these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1304, and 1306. No other statutes, articles, or codes are affected by the proposal.

§90.10. *Definitions.*

The following words and terms, as used in this chapter and Texas Occupations Code, Chapter 1306, have the following meanings:

(1) "Qualified financial institution" means a financial institution organized and licensed under the laws of the United States, a state of the United States, or the District of Columbia.

~~[(1) "Identity recovery service contract seller" or "seller" means a person, other than the provider or the administrator of the identity recovery service contract, who is responsible for marketing, offering, or selling identity recovery service contracts, but is not contractually obligated to an identity recovery service contract holder under the terms of an identity recovery service contract.]~~

(2) "Third-party administration of an identity recovery service contract" includes any of the following activities performed on behalf of an identity recovery service contract provider:

(A) performing or arranging the collection, maintenance, or disbursement of money to compensate any party for claims or repairs pursuant to an identity recovery service contract;

(B) participating in the processing or adjustment of claims arising under an identity recovery service contract;

(C) maintaining records required by Texas Occupations Code, Chapter 1306; or

(D) complying with provider requirements, other than financial security requirements, of Texas Occupations Code, Chapter 1306.

§90.20. *Registration Requirements--Provider.*

(a) No person may operate as a provider of identity recovery service contracts sold or issued, or offer to be a provider of identity recovery service contracts sold or issued, in this state without first registering with the department, unless the identity recovery service contracts offered by such person are specifically exempt from the application of Texas Occupations Code, Chapter 1306.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a completed personal information form [biographical affidavit] from each controlling person as defined in Texas Occupations Code §1306.004;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1306.004, if applicable;

(4) a list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and department registration number;

(5) a list of sellers of the provider's identity recovery service contracts, including each seller's name, assumed name, street address, and telephone number;

(6) the required fee; and

(7) proof of financial security as prescribed under §90.40.

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.]~~

§90.21. *Registration Renewal Requirements--Provider.*

(a) In order for a provider to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) except as provided under subsection (d), a completed personal information form [biographical affidavit] from any [each] controlling person as defined in Texas Occupations Code §1306.004 who has had a change in any of the information previously provided by the controlling person to the department or has not previously submitted a personal information form to the department. The applicant must indicate on the registration form if there has or has not been any change in the information previously provided by any controlling person to the department [or a form indicating there has been no change in the biographical affidavit since the previous registration or renewal from each controlling person];

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1306.004, if applicable;

(4) an updated list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and department registration number;

(5) an updated list of sellers of the provider's identity recovery service contracts, including each seller's name, assumed name, street address, and telephone number;

(6) the required fee; and

(7) proof of new or continuing financial security as prescribed under §90.40.

(d) Due to the statutory changes under Texas Occupations Code §1306.052 and §1306.053, for the first registration renewal on or after March 1, 2012, each controlling person of a provider must complete a personal information form as prescribed by the executive director.

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.]~~

(e) ~~[(f)]~~ A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1306 or this chapter with an expired registration.

§90.23. *Registration Requirements--Administrator.*

(a) No person may operate as an administrator for a provider or offer to act as an administrator for a provider operating in this state without first registering with the department.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a list of providers for which the person will act as an administrator, including each provider's name, assumed name, street address, telephone number, and department registration number;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1306.004; and

(4) the required fee.

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.]~~

§90.24. *Registration Renewal Requirements--Administrator.*

(a) In order for an administrator to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) an updated list of providers for which the person will act as an administrator, including each provider's name, assumed name, street address, telephone number, and department registration number;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1306.004; and

(4) the required fee.

~~[(d) Falsification of information on an application is cause for denial and/or revocation of the registration.]~~

~~[(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.]~~

(d) [(f)] A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1306 or this chapter with an expired registration.

§90.40. *Financial Security--General Requirements.*

(a) A provider must maintain financial security to ensure the faithful performance of a provider's obligations to its identity recovery service contract holders and for the benefit of those identity recovery service contract holders who suffer actual financial loss due to the provider's failure to perform those obligations.

(b) A provider must submit in a manner prescribed by the department proof of one of the following three forms of financial security

that meets the requirements of Texas Occupations Code §1306.101 and/or §1306.102:

(1) a reimbursement insurance policy;

(2) a funded reserve account and a security deposit; or

(3) net worth of at least \$100 million.

(c) Whichever form of financial security the provider uses must be maintained by the provider during the entire time the provider continues to do business in this state or is registered to do business in this state and until the provider has performed or otherwise satisfied all liabilities and obligations to its identity recovery service contract holders in this state.

~~[(e) All forms of financial security must be maintained by the provider for the entire time the provider continues to do business in this state or is registered to do business in this state.]~~

~~[(d) All forms of financial security must be kept in effect until the later of:]~~

~~[(1) two years after the provider ceases to do business in this state;]~~

~~[(2) two years after the provider's registration expires; or]~~

~~[(3) the executive director receives satisfactory proof from the provider and determines that the provider has discharged or otherwise adequately met all obligations to its identity recovery service contract holders in this state.]~~

(d) [(e)] If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not sell or issue a new identity recovery service contract after the effective date of the cancellation or lapse, unless and until the provider files with the executive director [a copy of] a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1306 and this chapter [these rules and that provides coverage after that date].

(e) [(f)] Cancellation or lapse of the financial security does not affect the provider's liability for an identity recovery service contract sold or issued by the provider before or after the effective date of the cancellation or lapse.

(f) [(g)] If a provider registered under Texas Occupations Code, Chapter 1304 also registers under Texas Occupations Code, Chapter 1306, the financial security used to comply with Texas Occupations Code, Chapter 1304 may be used to fulfill the requirements of Texas Occupations Code, Chapter 1306 provided that:

(1) the provider identifies, in a manner prescribed by the department, the names and registration numbers of both entities being covered by the financial security;

(2) the amount of financial security maintained must reflect the provider's combined financial obligations to its contract holders under Texas Occupations Code, Chapters 1304 and 1306; and

(3) the provider submits proof to the department that the amount of financial security maintained reflects the provider's combined financial obligations to its contract holders under Texas Occupations Code, Chapters 1304 and 1306.

§90.41. *Financial Security--Reimbursement Insurance Policy.*

(a) A provider that uses a reimbursement insurance policy to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102, will not be allowed to obtain or renew a registration unless the insurer issuing the policy has provided all of

the information and met all of the requirements set forth in Texas Occupations Code §1306.102(b).

(b) A reimbursement insurance policy that is used to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102 must include:

(1) the "Identity Recovery Service Contract Provider Texas Endorsement" prescribed by the executive director[; ~~or equivalent language~~]; and

(2) copy of the approval letter from the Texas Department of Insurance for using the endorsement.

§90.42. Financial Security--Funded Reserve Account and Security Deposit.

(a) A provider that uses a funded reserve account and security deposit to comply with the financial security requirements of Texas Occupations Code §1306.101, will not be allowed to obtain or renew a registration unless the provider:

(1) maintains the funded reserve account and the security deposit at or above the financial levels required under Texas Occupations Code §1306.101(b). These amounts are calculated using a form prescribed by the department; ~~and~~

(2) meets the requirements under this section; and

(3) submits the most recent audited financial statements as prescribed under Texas Occupations Code §1306.101(b).

(b) The funded reserve account maintained by the provider must:

(1) be kept separate from the provider's operating accounts; ~~and~~

(2) be clearly identified as the "{Provider's Name} Texas Identity Recovery Service Contracts Funded Reserve Account"; and

(3) ~~[(2)]~~ not be used for any purpose other than to cover the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state.

(c) In addition to maintaining the funded reserve account, the provider must submit one of the following forms of security deposit:

~~[(1) A surety bond that:]~~

~~[(A) is issued by a surety company authorized to do business in the State of Texas;]~~

~~[(B) conforms to the Texas Insurance Code;]~~

~~[(C) is on a department-approved form;]~~

~~[(D) is payable to the executive director for the satisfaction of eligible identity recovery service contract holder claims; and]~~

~~[(E) states that the surety company will provide the department 60 days prior written notice of its intent to cancel the bond;]~~

(1) ~~[(2)]~~ A certificate of deposit that is issued by a qualified financial institution, assigned to the executive director, and for the benefit of the department;

~~[(3) Securities of the type eligible for deposit by an authorized insurer in Texas;]~~

(2) ~~[(4)]~~ A deposit of cash ~~[or cash equivalents]; or~~

(3) ~~[(5)]~~ An original letter of credit acceptable to the department that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the provider;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the provider or other party.

(d) Upon request, the department may require the provider to submit the following additional financial reports:

(1) claims paid reports;

(2) account statements;

(3) monthly activity reports; or

(4) actuarial reports.

§90.70. Responsibilities of Providers and Administrators [Regis-trant--Provider and Administrator].

(a) The provider must clearly and conspicuously identify itself on all written identity recovery service contracts and[; ~~effective February 1, 2010;~~] on all written advertising materials that are used by the provider, its administrator(s), or its seller(s).

(b) The provider and/or any administrator appointed by the provider must provide identity recovery service contract holders with a notification that meets all of the following requirements.

(1) The notification must provide the name, mailing address, and telephone number of the department.

(2) The notification must contain a statement that unresolved complaints concerning identity recovery service contract providers or administrators [a registrant] or questions concerning the regulation of identity recovery service contract providers and administrators may be addressed to the department.

(3) The notification must be included on all written identity recovery service contracts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.

(c) The provider and/or any administrator appointed by the provider must provide identity recovery service contract holders with the provider's complaint resolution procedures.

(d) The provider and/or any administrator appointed by the provider must disclose the following information to identity recovery service contract holders in writing and in clear understandable language that is easy to read:

(1) the person or persons who are covered under the identity recovery service contract;

(2) the price of the identity recovery service contract separate from the purchase price of the automobile and any other products or services that are financed with the vehicle;

(3) the term of the identity recovery service contract;

(4) any conditions that may change the stated term of the identity recovery service contract, including if the identity recovery service contract holder:

(A) pays off the automobile early;

(B) makes late payments or defaults on the payments on the automobile;

(C) refinances the automobile; or

(D) sells or transfers title to the automobile;

(5) all required disclosures in accordance with Texas Occupations Code §1306.106;

(6) any exclusions, limitations, conditions or restrictions regarding the scope of services, cancellation, or transferability of the identity recovery service contract in accordance with Texas Occupations Code §1306.106;

~~[(7) the procedures and timeframes for returning an identity recovery service contract in accordance with Texas Occupations Code §1306.107;]~~

~~[(7) [(8)] the procedures and timeframes for an identity recovery service contract holder to cancel [voiding] an identity recovery service contract in accordance with Texas Occupations Code §1306.1081 [§1306.108];]~~

~~[(8) [(9)] the procedures and timeframes for a provider to refund [refunding] the purchase price of the identity recovery service contract and pay any applicable penalty to the identity recovery service contract holder in accordance with Texas Occupations Code §1306.1081 [§1306.108]; and]~~

~~[(9) [(10)] the conditions in which the provider [and/or administrator] may cancel an identity recovery service contract and issue a refund in accordance with Texas Occupations Code §1306.109.~~

(e) If not provided by the seller at the time of the sales, the [The] provider and/or any administrator appointed by the provider must provide a copy of the identity recovery service contract to the identity recovery service contract holder within a reasonable amount time after [45 days from] the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

(f) If not provided by the seller at the time of the sales, the [The] provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of an identity recovery service contract to the identity recovery service contract holder within a reasonable amount time after [45 days from] the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

~~[(g) Responsibility for Marketing and Sales Activities.;~~

~~[(1) The provider is responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's identity recovery service contracts pursuant to Texas Occupations Code, Chapter 1306 and this chapter.;~~

~~[(2) The provider is not responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's identity recovery service contracts if.;~~

~~[(A) the provider has a written contract with a seller.;~~

~~[(B) the contract requires the seller to follow Texas Occupations Code, Chapter 1306 and this chapter.;~~

~~[(C) the provider provides training to the seller about the product and the law.;~~

~~[(D) the provider immediately instructs a seller to correct its practices if the provider obtains knowledge that the seller is violating Texas Occupations Code, Chapter 1306 or this chapter.;~~

~~[(E) the provider terminates its use of a particular seller who fails to correct its practices within 14 days after being instructed by the provider to make corrections; and]~~

~~[(F) the provider notifies the department within 10 days of terminating a seller pursuant to subparagraph (E).]~~

~~[(g) [(h)] A provider shall report to the department within 30 days any change in information required by §90.20 and §90.21.~~

~~[(h) [(i)] An administrator shall report to the department within 30 days any change in information required by §90.23 and §90.24.~~

~~[(i) [(j)] Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code, Chapter 1306. These records include copies of the identity recovery service contracts marketed, sold, administered or issued in this state.~~

~~[(j) The provider's identity recovery service contracts, literature, and any written communications become false, deceptive or misleading under Texas Occupations Code §1306.111(a) when the provider, administrator, seller or other representative of the provider engages in any of the following activities, including but not limited to:~~

~~[(1) does not include in its identity recovery service contracts the required contract provisions and disclosures under Texas Occupations Code §1306.106;~~

~~[(2) fails to honor any of the terms of the identity recovery service contract; or]~~

~~[(3) fails to pay an eligible claim under the terms of the identity recovery service contract.~~

~~[(k) A provider must notify the department no later than 60 days prior to the provider ceasing operations in this state. A provider must notify the department as soon as possible after the provider files for bankruptcy or is placed into receivership and must provide the contact information for the bankruptcy trustee or receiver and the court handling these proceedings.;~~

~~[(l) Within 10 days after notifying the department in accordance with subsection (k), a provider must submit to the department.;~~

~~[(1) the names of the identity recovery service contracts sold or issued by the provider in this state and the number of active identity recovery service contracts under each contract name.;~~

~~[(2) the names and addresses of the identity recovery service contract holders with active identity recovery service contracts in this state and the remaining amount of time left on these active identity recovery service contracts; and]~~

~~[(3) any other information determined necessary by the department relating to the provider ceasing operations in this state.;~~

~~[(m) A provider must notify identity recovery service contract holders with active identity recovery service contracts in this state no later than 30 days prior to the provider ceasing operations in this state. The provider remains financially responsible to identity recovery service contract holders with active identity recovery service contracts in this state.;~~

~~§90.71. Responsibilities of Providers Ceasing Operations or Discontinuing Business.~~

~~[(a) To the extent not prohibited by any other law or court order, a provider must comply with the provisions under this rule when ceasing operations or discontinuing business in this state.~~

~~[(b) A provider must notify the department as soon as possible when ceasing operations or discontinuing business in this state.~~

~~[(c) Within 10 days after notifying the department in accordance with subsection (b), a provider must submit to the department.;~~

(1) a copy of each unique form of identity recovery service contract sold;

(2) the names and addresses of the identity recovery service contract holders with active identity recovery service contracts in this state;

(3) a list of each location at which the provider's identity recovery service contracts are marketed, sold, or offered for sale;

(4) the total number of active identity recovery service contracts in this state;

(5) the remaining amount of time left on the active identity recovery service contracts in this state; and

(6) any other information determined necessary by the department relating to the provider ceasing operations or discontinuing business in this state.

(d) A provider that ceases operations or discontinues business in this state remains contractually and financially responsible to identity recovery service contract holders with active identity recovery service contracts in this state.

(e) A provider that ceases operations or discontinues business in this state shall retain its records until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has performed or otherwise satisfied all liabilities and obligations to its identity recovery service contract holders in this state.

(f) Any security deposit on file with the department shall be retained by the department until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has performed or otherwise satisfied all liabilities and obligations to its identity recovery service contract holders in this 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.

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105195

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-5386



CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §§94.24 - 94.28, 94.80

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 94, §94.24 and §§94.26 - 94.28; and proposes amendments to §94.25 and §94.80, regarding the property tax professionals program.

The proposed rules implement changes delineated in House Bill (HB) 1179, 82nd Legislature, Regular Session (2011) which amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals.

Proposed new §94.24 establishes inactive status for registrants to comply with the mandates of HB 1179.

Proposed amendments to §94.25 simply reword the continuing education provision related to renewal to clarify when education for newly certified registrants is due.

Proposed new §94.26 establishes provisions for obtaining "break in service" credit to comply with the mandates of HB 1179. These provisions include providing evidence acceptable to the department to support the application.

Proposed new §94.27 establishes provisions for one-year extensions to registrants to complete their certification. These provisions are established to comply with the mandates of HB 1179. These provisions include providing acceptable documentation to support the application for extension. The extension will begin on the day after the original deadline for certification regardless of when the extension is requested or at the discretion of the department.

Proposed new §94.28 establishes reasonable qualifications for re-application of registrants, or past registrants, to comply with the mandates of HB 1179. This proposed rule allows a person to re-apply for registration after a period of non-registration of two years if the applicant meets the qualifications of a class II registrant in their respective field at the time of application.

The proposed amendments to §94.80 describes the fees applicable to the department and are dictated by the cost of the program. The fees are necessary to comply with the mandates of HB 1179.

The substance of these rule changes was recommended by the Tax Professional Advisory Committee (Committee) at its meeting on November 10, 2011.

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

Mr. Kuntz also has determined that for each year of the first five-year period the new rules and amendments are in effect, the public benefit will be added protection for the public health and safety. The result will be realized efficiency for the program and the industry at large.

There is no anticipated adverse economic effect on small or micro-businesses or to persons who are required to comply with the proposed new rules and amendments.

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

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

The new rules and amendments are proposed under Texas Occupations Code, Chapters 51 and 1151, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the proposal.

§94.24. Inactive Status.

(a) To change a registration to inactive status, an applicant must submit a completed application on a department-approved form.

(b) A person whose registration is on inactive status may not engage in activity requiring a registration.

(c) A registration on inactive status must be renewed in accordance with §94.22; however, continuing education is not required for renewal of a registration on inactive status.

(d) The time period to obtain certification requirements is stopped for the duration the registration is on inactive status.

(e) To change from an inactive registration to an active registration, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the applicable fee; and

(3) complete the continuing education that is required for the renewal of an active registration during the preceding registration period. Continuing education hours used to satisfy the requirement for changing from an inactive license status to an active license status may not also be utilized for a future renewal of an active registration.

§94.25. Continuing Education.

(a) - (d) (No change.)

(e) Continuing education credit must be completed during the 24 month period before the expiration of the registration [license]. Newly certified registrants are not required to complete continuing education until their second renewal after [completing] their certification deadline.

(f) - (k) (No change.)

§94.26. Break In Service Credit.

(a) A registrant may receive an adjustment of their anniversary date for a break in service as defined in Texas Occupations Code, §1151.160(f) by:

(1) submitting a completed form approved by the department; and

(2) paying the applicable fee.

(b) An applicant for credit under this provision must provide proof, acceptable to the department, of time during which the person was not employed in the type of employment for which the person was registered. If no proof is available, the department may award credit for "break in service" as it determines from previous department registration records.

(c) Under no circumstances will a break in service credit exceed five years.

§94.27. One-Year Extension.

(a) A registrant may receive a one-year extension to meet certification requirements by:

(1) submitting a completed form approved by the department;

(2) paying the applicable fee; and

(3) submitting supporting documentation deemed appropriate by the department for extension under Texas Occupations Code, §1151.160(g).

(b) The extension will begin on the day after the original deadline for certification, regardless of when the extension is requested or on the discretion of the department.

§94.28. Re-application.

An applicant that does not meet any of the requirements for extension under Texas Occupations Code, §1151.160(g), and does not qualify for reinstatement under Texas Occupations Code, §1151.1605, may re-apply for registration after being unregistered for two years by:

(1) paying the applicable fee for new application;

(2) submitting a completed form approved by the department; and

(3) qualifying as class II registrant.

§94.80. Fees.

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

(d) "Break in service" credit application fee--\$75

(e) One-Year Extension application fee--\$25

(f) Change from inactive status to active status--\$25

(g) [~~(d)~~] Late Renewal Fees. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(h) [~~(e)~~] Revised or duplicate license fees--\$25

(i) [~~(f)~~] All fees are non-refundable, except as otherwise provided by law.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105196

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-5386



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING FINANCIAL EXIGENCY

19 TAC §109.2001

The Texas Education Agency (TEA) proposes new §109.2001, concerning financial exigency. The new rule implements the requirements of the Texas Education Code (TEC), §44.011, as added by Senate Bill (SB) 8, 82nd Texas Legislature, First Called Session, 2011. The TEC, §44.011, requires that the commissioner of education adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

Previously there were no rules or regulations as to when a school district may declare financial exigency for the district. New TEC, §44.011, allows the board of trustees of a school district to adopt a resolution declaring a financial exigency for the district. Each time the board adopts a resolution under this section, the board must notify the commissioner.

Proposed new 19 TAC Chapter 109, Subchapter BB, §109.2001, would define financial exigency and establish in rule procedures for consistent implementation of the statutorily required written notification. In accordance with the TEC, §44.011, proposed new 19 TAC §109.2001 would adopt minimum standards concerning school district financial conditions that must exist for declaration of financial exigency by the board of trustees of the district. Also in accordance with statute, the proposed new rule would prescribe the time and manner in which notice must be given to the commissioner. This new section was submitted for adoption on an emergency basis simultaneous to the submission as proposed.

The proposed new section will require school districts to provide notice to the commissioner when the district declares financial exigency. The notice must be provided within 20 calendar days of adoption by a school district's board of trustees. School districts will be required to maintain documentation supporting the declaration of financial exigency for auditing purposes.

In conjunction with the addition of minimum standards concerning the declaration of financial exigency, School FIRST rules in 19 TAC Chapter 109, Subchapter AA, will be amended in 2012 for the fiscal year 2011-2012 data for financial accountability ratings to be published in summer 2013. A district declaring financial exigency will not be able to obtain the highest rating of Superior Achievement.

Nora Hancock, associate commissioner for grants and fiscal compliance, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule action.

Dr. Hancock has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the rule action will be the establishment of procedures for consistent implementation of the statutory requirements related to the declaration of financial exigency. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

The public comment period on the proposal begins December 9, 2011, and ends January 9, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also

be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 9, 2011.

The new section is proposed under the TEC, §44.011, as added by Senate Bill 8, 82nd Texas Legislature, 2011, which authorizes the commissioner to adopt by rule minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

The new section implements the TEC, §44.011.

§109.2001. Financial Exigency.

(a) Financial exigency means the financial position of a school district as a whole is such that the financial resources of the school district are insufficient to support existing academic programs or the school district is unable to finance the full compensation of staff for the current or succeeding fiscal year.

(b) Financial exigency may be declared by a school district board of trustees under one or more of the following conditions:

(1) a decrease of more than 20% in unassigned General Fund balance per student in weighted average daily attendance over the past two years or a projected reduction of 20% compared to the current year;

(2) a decline in enrollment by more than 10% over the past 5 years;

(3) a reduction of more than 10% in total General Fund total funding per student in weighted average daily attendance or a projected reduction of 10% compared to the current year;

(4) an unforeseen natural disaster requiring significant expenditures for repair or remediation in excess of 15% of the current year General Fund budget;

(5) an unanticipated major expense, including significant repair costs; litigation expenses, excluding lawsuits against the state; or tax refunds in excess of 15% of the current year General Fund budget; or

(6) any other circumstances approved in writing by the commissioner of education.

(c) The declaration of financial exigency expires at the end of the fiscal year during which the declaration is made unless the school district board of trustees adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year.

(d) Each time the school district board of trustees adopts a resolution or an extension declaring financial exigency, the board must notify the commissioner within 20 calendar days of the adoption. The notice must include the date the resolution was adopted and the reason(s) for the declaration of financial exigency. The notice must be signed by the board president and submitted to the Texas Education Agency division responsible for financial audits.

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 November 21, 2011.

TRD-201105159

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 8, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.6

The Texas Optometry Board proposes amendments to §273.6, concerning Provisional License, to enable the provisions of Senate Bill 1733, 82nd Legislature, Regular Session, 2011. The amendments provide an alternate licensing procedure for spouses of a person serving on active duty as a member of the armed forces of the United States. The amendment changes the name of "Provisional License" to "Licenses for a Limited Period".

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that spouses of persons serving on active duty as members of the armed forces of the United States will have an alternate and more timely process available to obtain a license.

It is anticipated that there will be no economic costs for these applicants, the persons required to comply with the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.252, and 351.254, and Senate Bill 1733, 82nd Legislature, Regular Session, 2011. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.252 and §351.254 as setting the requirements for license, and Senate Bill 1733, 82nd Legislature, Regular Session, 2011, as authorizing the alternate licensing procedure to spouses of persons on active duty with the armed forces.

§273.6. Licenses for a Limited Period [*Provisional License*].

(a) Provisional License.

(1) [(a)] Requirements for Provisional License. On application for examination, a candidate may apply for a provisional license under the following circumstances:

(A) [(1)] The applicant must be licensed in good standing as a therapeutic optometrist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act, and must furnish proof of such licensure on board forms provided.

(B) [(2)] The applicant must have passed the National Board of Examiners in Optometry (NBEO) Examination Parts I and II, after January 1, 1984, and Part III after June of 1994, as well as the Treatment and Management of Ocular Disease (TMOD) Examination after January of 1985 and must submit a true and correct copy of the applicant's score report.

(C) [(3)] The applicant must have satisfied the educational requirement of §280.2 of this title (relating to Required Education).

(D) [(4)] The applicant must not have failed an examination for a license conducted by the board.

(E) [(5)] The applicant's license to practice optometry must not have been revoked or suspended by any jurisdiction.

(2) [(b)] Sponsorship. A candidate for provisional licensure must be sponsored by a therapeutic optometrist who is currently licensed by the board with the following conditions applicable.

(A) [(1)] Prior to practice in Texas, on forms provided by the board, the sponsor licensee will certify to the board the following:

(i) [(A)] that such candidate will be working within the same office as the licensee, under direct supervision of the sponsor licensee; and

(ii) [(B)] that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) [(2)] Sponsor licensee will be held responsible for the unauthorized practice of optometry should such provisional license expire.

(3) [(c)] Hardship. An applicant for a provisional license may be excused from the requirements of sponsorship if the board determines that compliance constitutes a hardship to the applicant.

(4) [(d)] Application and fee.

(A) [(1)] The candidate for provisional licensure will be subject to all application requirements required by Chapter 271 of this

title (relating to Examinations) and subject to the applicable examination fees established under §273.4 of this title (relating to Optometry Fees). In addition, the candidate will be subject to a fee for issuance of a provisional license, as established under §273.4 of this title.

(B) [(2)] No provisional license can be issued until all application forms and fees are received in the board office and the application is approved.

(C) [(3)] A provisional license expires upon the earlier to occur of the passage of 180 days or notice by the board of the candidate's successful passage or failure of all examinations required by Chapter 271 of this title [(relating to Examinations)]. It shall be the responsibility of the candidate and sponsor to return the provisional license to the board office upon expiration.

(D) [(4)] The candidate's failure to sit for the first scheduled board examination following application for examination invalidates the provisional license unless in the discretion of the board sufficient and reasonable evidence regarding nonappearance exists.

(E) [(5)] Each candidate for provisional license shall receive only one nonrenewable license prior to the issuance of a therapeutic optometry license.

(5) [(e)] If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Optometry Act or board rules, such provisional license will be subject to termination.

(b) License for spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) Requirements for license:

(A) The applicant must be a spouse of a person serving on active duty based in the State of Texas as a member of the armed forces of the United States, and must furnish proof of such on board forms provided; and

(i) The applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act, and must furnish proof of such licensure on board forms provided; or

(ii) The applicant must, within the five years preceding the application date, have held a license in this state that expired while the applicant lived in another state for at least six months.

(B) The applicant's license to practice optometry must not have been revoked or suspended by any jurisdiction. The applicant must furnish license verifications from each state in which the person is currently or previously licensed.

(2) Application.

(A) The applicant shall complete the application required under §271.5 of this title (relating to Licensure without Examination), including the submission of completed Federal Bureau of Investigation fingerprint cards provided by the board and a certified copy of the optometry school transcript.

(B) An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.

(3) Jurisprudence Exam. Applicants receiving a license under this section must take and pass the Jurisprudence exam within 6 months of the issuance of the license.

(4) License and fees.

(A) A license issued under this section shall be a license to practice therapeutic optometry with the same obligations and duties required of that licensee and subject to the same disciplinary requirements for that license.

(B) The initial license fee and license renewal fees are the same as the active license fee set out in §273.4 of this title. The expiration date for the license is the same as an active license, and may be renewed under the same terms and conditions.

(5) Expiration of License. A license issued under this subsection expires and cannot be renewed:

(A) Six months after the date the applicant's spouse ceases to serve on active duty based in the State of Texas as a member of the armed forces of the United States. The licensee is required to report a change in the spouse's status immediately to the board;

(B) Immediately upon the failure of the licensee to obtain a passing score on the Jurisprudence exam within 6 months of the date of the issuance of the license; or

(C) Four years after the date the license is first issued if the license has not expired by that date.

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 November 22, 2011.

TRD-201105165

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 305-8502



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.2 - 283.4, 283.7 - 283.12

The Texas State Board of Pharmacy proposes amendments to §283.2 concerning Definitions, §283.3 concerning Educational and Age Requirements, §283.4 concerning Internship Requirements, §283.7 concerning Examination Requirements, §283.8 concerning Reciprocity Requirements, §283.9 concerning Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity, §283.10 concerning Requirements for Application for a Pharmacist License Which Has Expired, §283.11 concerning Examination Retake Requirements, and new §283.12 concerning Licenses for Military Spouses. The amendments to §§283.2, 283.3, 283.4, 283.7, 283.8, 283.9, 283.10, and 283.11 clarify and update the licensure requirements for pharmacists and add a definition and requirements for resident interns. The proposed new rule §283.12, if adopted, implements the provisions of Senate Bill 1733 passed by the 2011 Texas Legislature to allow for alternative procedures for registration as a pharmacy technician for military spouses.

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 be to ensure that qualified individuals apply for a pharmacist license and applicants who are military spouses are allowed alternative procedures for licensure. Economic cost to persons who are required to comply with the new rule §283.12 will be the fee for licensure as outlined in §283.9 concerning Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Comments on the proposed amendments and new rule 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., January 13, 2012.

The proposed amendments and new rule are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §55.004 of the 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 Board interprets §55.004 as authorizing the agency to adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

The statutes affected by the amendments and new rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code and Chapter 55, Texas Occupations Code.

§283.2. Definitions.

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

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

(5) College/School of pharmacy--A college/school of pharmacy whose professional degree program has been accredited by ACPE and approved by the board.

~~[(5) BS in pharmacy--A Bachelor of Science degree in pharmacy.]~~

(6) - (8) (No change.)

(9) Extended-intern--An intern, registered with the board, who has:

(A) applied to the board for licensure by examination and has successfully passed the NAPLEX and Texas Pharmacy Jurisprudence Examination but lacks the required number of hours of internship for licensure; or

(B) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six ~~three~~ calendar months after graduation and has either:

(i) graduated and received a professional degree from a college/school of pharmacy ~~[the professional degree program of which has been accredited by ACPE and approved by the board];~~ or

(ii) completed all of the requirements for graduation and for receipt of a professional degree from a college/school of pharmacy ~~[the professional degree program of which has been accredited by ACPE and approved by the board];~~ or

(C) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six ~~three~~ calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D) applied to the Board for re-issuance of a pharmacist license which has been expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination ~~[examination]~~, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(10) - (11) (No change.)

~~[(12) FPGEE--The Foreign Pharmacy Graduate Equivalency Examination, given by FPGEC.]~~

(12) [(13)] Healthcare Professional--An individual licensed as:

(A) a physician in Texas or another state; or

(B) a pharmacist in a state other than Texas but not licensed in Texas.

(13) [(14)] Healthcare Professional Preceptor--A health-care professional serving as an instructor for a Texas college/school-based internship program who is recognized by a Texas college/school of pharmacy to supervise and be responsible for the activities and functions of a student-intern or intern-trainee in the internship program.

(14) [(15)] Intern-trainee--A pharmacist intern, registered with the board, who is enrolled in the first year of the professional sequence of a Texas college/school of pharmacy and who may only work during times and in sites assigned by a Texas college/school of pharmacy.

(15) [(16)] Internship--A practical experience program that is approved by the board.

(16) [(17)] MPJE--Multistate Pharmacy Jurisprudence Examination.

(17) [(18)] NABP--The National Association of Boards of Pharmacy.

(18) [(19)] NAPLEX--The North American Pharmacy Licensing Examination, or its predecessor, the National Association of Boards of Pharmacy Licensing Examination.

~~[(20) Pharm D--A doctorate in pharmacy.]~~

(19) [(21)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services defined in the rules of the board and intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(20) [(22)] Pharmacist-intern--An intern-trainee, a student-intern, or an extended-intern who is participating in a board approved internship program.

(21) [(23)] Pharmacist Preceptor--A pharmacist licensed in Texas to practice pharmacy who meets the requirements under board rules and is recognized by the board to supervise and be responsible

for the activities and functions of a pharmacist-intern in an internship program.

(22) Resident intern--An individual who:

(A) has graduated from a college/school of pharmacy;
and

(B) is completing a residency program in the state of Texas accredited by the American Society of Health-System Pharmacists.

(23) [(24)] Preceptor--A pharmacist preceptor or a health-care professional preceptor.

(24) [(25)] Professional degree--A bachelor of science degree [baccalaureate] in pharmacy [(BS)] or a doctorate of pharmacy [(Pharm D)] degree.

(25) [(26)] State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(26) [(27)] Student-intern--A pharmacist-intern, registered with the board who is enrolled in the professional sequence of a college/school of pharmacy, has completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy, and is participating in a board-approved internship program.

(27) [(28)] Texas Pharmacy Jurisprudence Examination [Exam or Texas Drug and Pharmacy Jurisprudence Examination]--A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

§283.3. *Educational and Age Requirements.*

An applicant for licensure as a pharmacist shall be of good moral character, provide satisfactory evidence that the age of 18 years has been obtained and shall meet one of the following requirements:

(1) have graduated and received a professional degree from a college of pharmacy [~~the professional degree program of which has been accredited by ACPE and meets the requirements of the board~~]; or

(2) have graduated from a foreign college of pharmacy and obtained full certification from the FPGEC.

§283.4. *Internship Requirements.*

(a) (No change.)

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one or more of the following methods:

(A) in a board approved student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program as specified in subsection (d) of this section; and/or

(C) graduation from a college/school of pharmacy after July 1, 2007. Persons graduating from such programs shall be credited 1,500 hours or the number of hours actually obtained and reported by the college; and/or

(D) [(C)] [~~through~~] internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date [dates] of birth, and social security number [~~numbers~~]; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application.

(ii) is enrolled in the professional sequence of a college/school of pharmacy [~~whose professional degree program has been accredited by ACPE and approved by the board~~];

(iii) has successfully completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy; and

(iv) has met all requirements necessary [~~in order~~] for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a [Texas] college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires:

(i) if the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of phar-

macy [whose professional degree program has been accredited by ACPE and approved by the board];

(ii) the student-intern fails either the NAPLEX or [and/or] Texas Pharmacy Jurisprudence Examinations specified in this section; or

(iii) the student-intern fails to take either the NAPLEX or [and/or] Texas Pharmacy Jurisprudence Examinations or both within six [three] calendar months after graduation.

(B) The executive director of the board, in his/her discretion may extend the term of the student internship if administration of the NAPLEX or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(3) Texas colleges/schools of pharmacy internship programs.

~~{(A) The board shall review for approval Texas colleges/schools of pharmacy internship programs of each fiscal year. The purpose of the board review will be to determine if such internship programs demonstrate that the competency objectives listed in subsection (a) of this section are being met by each student intern completing the internship. The board reserves the right to set conditions relating to the approval of such programs.}~~

~~{(B) The Texas colleges/schools of pharmacy shall determine that each student intern completing the college/school internship program demonstrates through assessment the competency objectives listed in subsection (a) of this section.}~~

~~{(C) Internship experience shall be gained under a preceptor.}~~

~~{(D) All internship experience shall be approved by the board and shall occur in sites and under conditions which teach one or more of the competency objectives listed in subsection (a) of this section.}~~

~~{(E) Prior to taking the licensure examination any applicant participating in a Texas college/school-based internship shall complete the requirements of such internship.}~~

~~{(A) [(F)] Intern-trainees and student-interns completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. No credit shall be awarded for didactic experience.~~

~~{(B) [(G)] No more than 600 hours of the required 1,500 hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy.~~

~~{(C) [(H)] Individuals enrolled in the professional sequence of a Texas college/school of pharmacy [whose professional degree program has been accredited by ACPE and approved by the board] may be designated as a intern-trainee provided he/she:~~

~~(i) submits an application to the board that includes the following information:~~

~~(I) name;~~

~~(II) addresses, phone numbers, date [dates] of birth, and social security number [numbers]; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~

~~(III) college of pharmacy and expected graduation date; and~~

~~(IV) any other information requested on the application.~~

~~(ii) is enrolled in the professional sequence of a college/school of pharmacy [whose professional degree program has been accredited by ACPE and approved by the board]; and~~

~~(iii) has met all requirements necessary [in order] for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs. Such internship shall remain in effect during the time the intern-trainee is enrolled in the first year of the professional sequence and shall expire upon completion of the first year of the professional sequence or upon separation from the professional sequence.~~

~~(d) Extended-internship program.~~

~~(1) A person may be designated an extended-intern provided he/she has met one of the following requirements:~~

~~(A) passed NAPLEX and the Texas Pharmacy Jurisprudence Examinations [Examination] but lacks the required number of internship hours for licensure;~~

~~(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six [three] calendar months after graduation and has:~~

~~(i) graduated and received a professional degree from a college/school of pharmacy [the professional degree program of which has been accredited by ACPE and approved by the board]; or~~

~~(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy; [the professional degree program of which has been accredited by ACPE and approved by the board; or]~~

~~(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six [three] calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;~~

~~(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination [pharmacy jurisprudence examination], but lacks the required number of hours of internship or continuing education required for licensure; [or]~~

~~(E) is a resident in a residency program accredited by the American Society of Health-System Pharmacists in the state of Texas; or~~

~~(F) [(E)] been ordered by the Board to complete an internship.~~

~~(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must:~~

~~(A) submit an application to the board that includes the following information:~~

~~(i) name;~~

~~(ii) addresses, phone numbers, date [dates] of birth, and social security number [numbers]; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number~~

along with documentation indicating why the individual is unable to obtain a social security number;

(iii) any other information requested on the application; and

(B) meet all requirements necessary ~~[in order]~~ for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor.

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon:

(A) the failure of the extended-intern to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six ~~[three]~~ calendar months after graduation or ~~[Foreign Pharmacy Graduate Equivalency Commission (FPGEC)]~~ certification; ~~[or]~~

(B) the failure of the extended-intern to pass the NAPLEX and Texas Pharmacy Jurisprudence Examinations specified in this section; ~~[-]~~

(C) upon termination of the residency program; or

(D) obtaining a Texas pharmacist license.

(5) The executive director of the board, in his/her discretion may extend the term of the extended internship if administration of the NAPLEX and/or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(6) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

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

§283.7. Examination Requirements.

Each applicant for licensure by examination shall pass the Texas Pharmacy Jurisprudence Examination and the NAPLEX. The examination requirements shall be as follows:

(1) Prior to taking the required examination, the applicant shall:

(A) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(B) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs; and

(C) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date ~~[dates]~~ of birth, and social security number ~~[numbers]~~; however, if an individual is un-

able to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application.

(2) - (9) (No change.)

§283.8. Reciprocity Requirements.

(a) (No change.)

(b) A reciprocity applicant originally licensed after January 1, 1978, and who has graduated and received a professional degree from a college of pharmacy ~~[whose professional degree program has been approved by ACPE and approved by the board]~~, shall show proof such applicant has ~~[-]~~

~~[(1)]~~ passed the NAPLEX or equivalent examination based on criteria no less stringent than the criteria in force in Texas; ~~[-; or]~~

~~[(2) been continually engaged in the practice of pharmacy for a period of two years immediately preceding the application for reciprocal licensure and has obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state that originally licensed such pharmacist; or]~~

~~[(3) been licensed to practice pharmacy for a period of two years immediately preceding the application for reciprocal licensure and has obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state that originally licensed such pharmacist.]~~

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

§283.9. Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity.

(a) (No change.)

(b) If an applicant fails an examination or is required to take an examination by the Board, the application fee is \$52 for each examination the applicant is required to take. ~~[fees for one examination are as stated in subsection (a) of this section.]~~

(c) - (e) (No change.)

§283.10. Requirements for Application for a Pharmacist License Which Has Expired.

(a) - (e) (No change.)

(f) Persons practicing pharmacy in another state. Beginning January 1, 2002, the board may issue a license to a person who was licensed as a pharmacist in Texas, moved to another state, is licensed in the other state, and has been engaged in the practice of pharmacy in the other state for the two years preceding the application if the person meets the following requirements:

(1) makes application for licensure to the board on a form prescribed by the board;

(2) submits to the board certification that the applicant:

(A) is licensed as a pharmacist in another state and that such license is in good standing;

(B) has been continuously employed as a pharmacist in that state for the two years preceding the application; and

(C) has completed a minimum of 30 contact hours of approved continuing education during the preceding two license years;

(3) passes the Texas Pharmacy Jurisprudence Examination ~~[pharmacy jurisprudence examination]~~ with a grade of 75 (the passing

grade may be used for the purpose of licensure for a period of two years from the date of passing the examination); and

(4) pays to the board the examination fee set out in §283.9 of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity).

(g) Persons not practicing pharmacy. Beginning January 1, 2002, the board may issue a license to a person who was licensed as a pharmacist in this state, but has not practiced pharmacy for the two years preceding application for licensure under the following conditions.

(1) The person's Texas pharmacist license has been expired for less than 10 years, the person shall:

(A) make application for licensure to the board on a form prescribed by the board;

(B) pass the Texas Pharmacy Jurisprudence Examination [~~pharmacy jurisprudence examination~~] with a grade of 75 (the passing grade may be used for the purpose of licensure for a period of two years from the date of passing the examination);

(C) pay the examination fee set out in §283.9 of this title; and

(D) complete approved continuing education and/or board-approved internship requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education;

(iii) if the Texas pharmacist license has been expired for more than three years but less than four years, the applicant shall complete 45 contact hours of approved continuing education;

(iv) if the Texas pharmacist license has been expired for more than four years but less than five years, the applicant shall complete 45 contact hours of approved continuing education and 500 hours of internship in a board-approved internship program;

(v) if the Texas pharmacist license has been expired for more than five years but less than six years, the applicant shall complete 45 contact hours of approved continuing education and 700 hours of internship in a board-approved internship program;

(vi) if the Texas pharmacist license has been expired for more than six years but less than seven years, the applicant shall complete 45 contact hours of approved continuing education and 900 hours of internship in a board-approved internship program;

(vii) if the Texas pharmacist license has been expired for more than seven years but less than eight years, the applicant shall complete 45 contact hours of approved continuing education and 1,100 hours of internship in a board-approved internship program;

(viii) if the Texas pharmacist license has been expired for more than eight years but less than nine years, the applicant shall complete 45 contact hours of approved continuing education and 1,300 hours of internship in a board-approved internship program; and

(ix) if the Texas pharmacist license has been expired for more than nine years but less than 10 years, the applicant shall complete 45 contact hours of approved continuing education and 1,500 hours of internship in a board-approved internship program.

(2) Any hours of approved continuing education earned within two years prior to the applicant successfully passing the Texas Pharmacy Jurisprudence Examination [~~pharmacy jurisprudence examination~~] may be applied towards the continuing education requirement.

(3) Any hours worked as a licensed pharmacist in another state during the two years prior to the applicant successfully passing the Texas Pharmacy Jurisprudence Examination [~~pharmacy jurisprudence examination~~] may be applied towards the internship requirement.

(4) All requirements for licensure shall be completed within two years from the date the applicant successfully passes the Texas Pharmacy Jurisprudence Examination [~~pharmacy jurisprudence examination~~].

(5) If the person's Texas pharmacist license has been expired for 10 years or more, the applicant shall apply for licensure by examination as specified in §283.7 of this title and §283.4 of this title (relating to Internship Requirements).

§283.11. Examination Retake Requirements.

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

(c) Examination Retake Committee. The board shall appoint one representative from each Texas college/school of pharmacy and one current board member to serve on the Examination Retake Committee. The Examination Retake Committee shall:

(1) - (5) (No change.)

(d) (No change.)

§283.12. Licenses for Military Spouses.

(a) For the purpose of §55.004, Occupations Code, an applicant for a pharmacist's license who is the spouse of a person serving on active duty as a member of the armed forces of the United States may complete the following procedures for licensing as a pharmacist.

(1) Requirements for licensing by reciprocity. An applicant for licensing by reciprocity who meets all of the following requirements may be granted a temporary license as specified in subsection (b) of this section prior to completing the NABP application for pharmacist license by reciprocity, and taking and passing the Texas Pharmacy Jurisprudence Examination. The applicant shall:

(A) complete the Texas application for pharmacist license by reciprocity that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application;

(B) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(C) present to the board proof of initial licensing by examination and proof that any current licenses and any other licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(D) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal

any disposition for a crime that board rule §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension;

(E) pay the licensing fee set out in §283.9 of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity); and

(F) provide documentation that the applicant is the spouse of a member of the armed forces of the United States to include:

- (i) marriage certificate; and
- (ii) military identification indicating that the:
 - (I) applicant is a military dependent; and
 - (II) applicant's spouse is on active duty status.

(2) Requirements for an applicant whose Texas pharmacist's license has expired. An applicant whose Texas pharmacist's license has expired within five years preceding the application date and while the applicant lived in another state for at least six months:

(A) shall complete the Texas application for licensing that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation that the applicant is the spouse of a person serving on active duty as a member of the armed forces of the United States to include:

- (i) marriage certificate; and
- (ii) military identification;

(C) shall pay the renewal fee specified in §295.5 of this title (relating to Pharmacist License Renewal Fees);

(D) shall complete approved continuing education requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education; or

(iii) if the Texas pharmacist license has been expired for more than three years but less than five years, the applicant shall complete 45 contact hours of approved continuing education; and

(E) is not required to take the Texas Pharmacy Jurisprudence Examination.

(b) A temporary license issued under this section is valid for no more than six months and may be extended, if disciplinary action is pending, or upon request, as otherwise determined reasonably necessary by the executive director of the board.

(c) A temporary license issued under this section expires within six months of issuance if the individual fails to pass the Texas

Pharmacy Jurisprudence Examination within six months or fails to take the Texas Pharmacy Jurisprudence Examination within six months.

(d) An individual may not serve as pharmacist-in-charge of a pharmacy with a temporary license issued under 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 November 28, 2011.

TRD-201105197

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2012

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



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 Senate Bill 594 passed by the 2011 Texas Legislature to allow the electronic transmission of Schedule II controlled substance prescription orders and update recordkeeping requirements with regard to documenting patient counseling.

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 Schedule II controlled substance prescription orders transmitted electronically to the pharmacy are dispensed in compliance with state and federal requirements and the requirements for documenting patient counseling are consistent with other sections of the rules. 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., January 13, 2012.

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) - (3) (No change.)

(4) Electronic prescription drug orders. For the purpose of this subsection, prescription drug orders shall be considered the same as verbal prescription drug orders.

(A) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with the federal and state laws and the rules of the Drug Enforcement Administration and Texas Department of Public Safety.

~~(D) [(C)]~~ A pharmacist may not dispense an electronic prescription drug order for a~~[-]~~

~~[(i)]~~ Schedule II ~~controlled substance, except as authorized for faxed prescriptions in §481.074, Health and Safety Code; or~~

~~[(ii)]~~ dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) (No change.)

(6) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(viii) date of issuance.

(B) All original electronic prescription drug orders shall bear:

(i) name of the patient, if such drug is for an animal, the species of such animal, and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) indications for use, unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) if a faxed prescription, a statement which indicates that the prescription has been faxed (e.g., Faxed to);

(x) telephone number of the prescribing practitioner;

(xi) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(xii) if transmitted by a designated agent, the full name of the designated agent.

(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, 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) 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; and

(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) for each new prescription the initials or identification code of the pharmacist responsible for providing counseling.]~~

(7) - (9) (No change.)

(c) - (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 November 28, 2011.

TRD-201105198

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2012

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



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.10

The Texas State Board of Pharmacy proposes new §297.10, concerning Registration for Military Spouses. The proposed new rule, if adopted, implements the provisions of Senate Bill 1733 passed by the 2011 Texas Legislature to allow for alternative procedures for registration as a pharmacy technician for military spouses.

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 applicants who are military spouses are allowed alternative procedures for registration. Economic cost to persons who are required to comply with the new rule will be the fee for registration as outlined in §297.4 concerning fees for pharmacy technician trainees and pharmacy technicians. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Comments on the proposed new rule 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., January 13, 2012.

The new rule is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §55.004 of the 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 Board interprets §55.004 as authorizing the agency to adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

The statutes affected by the new rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code and Chapter 55, Texas Occupations Code.

§297.10. Registration for Military Spouses.

For the purpose of §55.004, Occupations Code, an applicant for a pharmacy technician registration who is the spouse of a person serving on active duty as a member of the armed forces of the United States may complete the following procedures for registering as a pharmacy technician.

(1) An applicant who holds a current registration as a pharmacy technician issued by another state shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(2) An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date and the registration expired while the applicant lived in another state for at least six months who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation that the applicant is the spouse of a member of the armed forces of the United States to include:

(i) marriage certificate; and

(ii) military identification indicating that the:

(I) applicant is a military dependent; and

(II) applicant's spouse is on active duty status;

(C) shall pay the registration fee set out in §297.4 of this title;

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of

this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current PTCB certificate.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105199

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2012

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



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681.2, 681.14, 681.15, 681.41, 681.46, 681.72, 681.81, 681.91, 681.93, 681.112, and 681.125, and new §681.172, concerning the licensing and regulation of professional counselors.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 681.2, 681.14, 681.15, 681.41, 681.46, 681.72, 681.81, 681.91, 681.93, 681.112, and 681.125 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed; however, the rules will be amended and proposed with revisions as described in this preamble. The proposed revisions ensure that the rules reflect current legal, policy, and operational considerations; improve draftsmanship; and make the rules more accessible, understandable, and usable, to the extent possible.

SECTION-BY-SECTION SUMMARY

The definition of "art therapy intern" in §681.2(5) is deleted for clarity as an LPC-Intern cannot hold the art therapy designation. Paragraphs (6) - (14) of the section are renumbered to reflect the deletion of paragraph (5).

Section 681.14(a)(1) is amended to collect a fee of \$90 for application and intern license, and a fee for \$100 for a two-year initial license which replaced the \$95 fee which included the \$90 application fee plus the \$5 Texas Online fee. This is not an increase in fees because the fees are being collected up front instead of the rest at the time the license is upgraded to full licensure. Subsection (a)(2) concerning examination fees is deleted as obsolete as determined by the board, as the fee has not been assessed by the board since 2005. Subsection (a)(3) is deleted as obsolete, as the temporary license extension fee has not been collected in

a number of years, and requires renumbering of the remaining paragraphs of the subsection. The deletion of subsection (c) will align the section with §681.15 concerning the reimbursement of licensing fees.

Section 681.15(b) - (d) is deleted as some fees might be refunded, depending on the circumstance.

Section 681.41(aa) is added to require a licensee to obtain a copy of the divorce decree and current custody agreement before counseling a minor and subsection (bb) is renumbered accordingly.

Section 681.46(c) is amended to add a time limit on when an address or name change must be received in the board office.

Section 681.72(d) is amended to show that the supervisor is responsible for submitting the supervisor agreement form for any new site or intern change. New subsection (e) further clarifies supervision hour approval and this requires renumbering of subsections (f) and (g).

Section 681.81(g) is added to limit the time between earning a degree and when application must occur unless applying by reciprocity from another state.

Section 681.91 is amended to remove references to supervised experience gained prior to 1994 in subsection (b); new subsection (k) restates the requirement for the supervisor to submit the supervisor agreement form to the board office for changes or additional supervisees or sites; and new subsection (l) restates that a new supervisor agreement form must be submitted for each new supervisor or site before supervision begins. Subsection (m) is renumbered due to the addition of new subsections (k) and (l).

Section 681.93(c)(1) is amended to limit the number of years a supervision course is accepted prior to application of the supervisor status. Subsection (d) is amended to require the supervisor to maintain a more detailed log of supervision.

Section 681.112 is amended for clarity regarding the required exams for licensure.

Section 681.125(e) is amended to include the ethics requirement for licensees returning to active status; subsection (g) is amended to require a new supervision course for LPC-Supervisors who have gone on inactive status for more than two years; and new subsection (i) limits the number of years an LPC-Intern can be on inactive status.

New 681.172 outlines the due process for licensees in violation of an Agreed Order.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed. There will be no decrease in general revenue each year of the first five years the sections are in effect.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses. It was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections as proposed. The rules relate to individuals who are licensed as professional counselors.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of counseling in Texas, which will protect and promote public health, safety, and welfare, and to ensure that statutory directives are carried out.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

SUBCHAPTER A. THE BOARD

22 TAC §§681.2, 681.14, 681.15

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

The amendments affect Occupations Code, Chapter 503.

§681.2. Definitions.

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

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

~~[(5) Art therapy intern—An LPC or an LPC Intern holding a temporary license with an art therapy specialty designation.]~~

~~(5) [(6)] Board--The Texas State Board of Examiners of Professional Counselors.~~

~~(6) [(7)] Client--A person who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.~~

~~(7) [(8)] Counseling-related field--A mental health discipline utilizing human development, psychotherapeutic, and mental health principles including, but not limited to, psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.~~

~~(8) [(9)] Department--Department of State Health Services.~~

~~(9) [(10)] Health care professional--A licensee or any other person licensed, certified, or registered by the state in a health related profession.~~

~~(10) [(11)] License--A regular license, regular license with art therapy specialty designation, provisional license, or temporary license issued by the board.~~

~~(11) [(12)] Licensee--A person who holds a regular license, regular license with art therapy specialty designation, provisional license, or temporary license.~~

~~(12) [(13)] LPC Intern--A person who holds a temporary license to practice counseling.~~

~~(13) [(14)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3) and other individuals participating with them in pastoral counseling if:~~

~~(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(5)(I) (1982);~~

~~(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and~~

~~(C) the person does not use the title of or hold himself or herself out as a professional counselor.~~

~~(14) [(15)] Supervisor--A person approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements), to supervise an LPC Intern.~~

§681.14. Licensing Fees.

(a) Licensing fees are as follows:

~~(1) Application, intern license and initial license fee--\$190 [\$95.00];~~

~~[(2) examination fees as determined by the board.]~~

~~[(3) temporary license extension fee--\$30;]~~

~~(2) [(4)] 2 year renewal fee [an initial regular license or a renewal regular license]--\$100;~~

~~(3) [(5)] late renewal fee:~~

~~(A) 1-90 days after expiration--\$125; and~~

~~(B) 91-365 days after expiration--\$150.~~

~~(4) [(6)] 2-year inactive status fee--\$50;~~

(5) ~~[(7)]~~ license certificate or renewal card duplication or replacement fee--\$10;

(6) ~~[(8)]~~ returned check fee--\$25;

(7) ~~[(9)]~~ art therapy specialty designation application fee--\$30 (in addition to any necessary application fees listed in paragraphs (1) - ~~(6)~~ ~~[(8)]~~ of this subsection); and

(8) ~~[(10)]~~ criminal history evaluation letter fee--\$50.

(b) (No change.)

~~[(e) Fees paid to the board are not refundable except in accordance with §681.15 of this title (relating to Processing Procedures).]~~

~~(c) [(d)] Remittances submitted to the board in payment of a required fee may be in the form of a personal check, cashier's check, or money order.~~

~~(d) [(e)] For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through www.texas.gov.~~

~~(e) [(f)] For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.~~

§681.15. Processing Procedures.

~~[(a)] Time periods. The board shall comply with the following procedures in processing applications for a license and renewal of a regular license.~~

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

- (A) issuance of temporary license - 20 working days; or
- (B) letter of application deficiency - 20 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial end on the day notice of the proposed decision is mailed to the applicant. The time periods are as follows:

- (A) letter of approval for examination - 20 working days;
- (B) initial letter of approval for a license - 30 working days; and
- (C) letter of denial of a license - 30 working days.

(3) The period of time from the receipt of the application for renewal of a regular license until the renewal card is issued or written notice is given that the application is deficient and additional specific information is required shall be 20 working days. The regular license renewal may be issued in lieu of the notice of acceptance. The period of time from the receipt of the last item necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal shall be 20 working days.

~~[(b) Reimbursement of licensing fees.]~~

~~[(1) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the~~

~~executive director. If the executive director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.]~~

~~[(2) Good cause for exceeding the time period is considered to exist if the number of applications for a license or license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.]~~

~~[(e) Appeal: If a request for reimbursement under subsection (b) of this section is denied by the executive director, the applicant may appeal to the chair of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chair at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chair shall provide written notice of the chair's decision to the applicant and the executive director. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.]~~

~~[(d) Contested cases: The time periods for contested cases related to the denial of a license or a license renewal are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the board office mails notice of the proposed denial and ends when the decision of the board is final and appealable. A hearing may be completed within six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.]~~

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105202

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER C. CODE OF ETHICS

22 TAC §681.41, §681.46

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

The amendments affect Occupations Code, Chapter 503.

§681.41. General Ethical Requirements.

(a) - (z) (No change.)

(aa) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable divorce decree. A licensee shall maintain these documents in the client's record.

(bb) ~~[(aa)]~~ A licensee shall establish a plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice. A licensee shall inform each new client of the plan.

§681.46. *Licensees and the Board.*

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

(c) The licensee shall report name changes, any changes in home or business address or phone number, employment setting, or other relevant changes to the board in writing within 30 days of the change.

~~[(e) A licensee shall keep his or her board file updated by notifying the board in writing of changes of name, highest academic degree granted, address, telephone number, and employment.]~~

(d) - (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.

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105203

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §681.72

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

The amendment affects Occupations Code, Chapter 503.

§681.72. *Required Application Materials.*

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

(d) The supervisor shall submit a supervisory agreement form ~~[must be]~~ completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form. ~~[A supervisory agreement form must be submitted for subsequent supervisors and settings, before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board may not be counted toward licensure.]~~

(e) A supervisory agreement form must be submitted for subsequent supervisors and settings, before the supervision begins under

the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board may not be counted toward licensure.

(f) ~~[(e)]~~ Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s) where the applicant obtained the course work or an official transcript may be attached to the application in a sealed envelope from the college or university.

(g) ~~[(f)]~~ An applicant must submit examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam along with proof of completion of the Texas Jurisprudence Exam. The National Counselor Exam must have been taken no more than five years prior to the date of application. The Texas Jurisprudence Exam must have been taken no more than two years prior to the date of application.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105204

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §681.81

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

The amendment affects Occupations Code, Chapter 503.

§681.81. *General.*

(a) - (f) (No change.)

(g) A graduate degree and graduate coursework that was awarded or earned more than 20 years prior to the application date may not be used to fulfill the requirements for licensure unless the applicant has held a license issued by another state for at least 10 years prior to the application date.

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 November 28, 2011.

TRD-201105205

Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: January 8, 2012
For further information, please call: (512) 776-6972



SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §681.91, §681.93

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

The amendments affect Occupations Code, Chapter 503.

§681.91. *Temporary License.*

(a) (No change.)

(b) To practice counseling in Texas, a person must obtain a temporary license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting shall not count toward the supervised experience requirements. ~~[Supervised experience hours gained prior to June 1, 1994, may count toward licensure if all academic requirements are met at the time of application. Hours gained after June 1, 1994 cannot count, unless the person held a temporary license while accumulating the hours.]~~

(c) - (j) (No change.)

(k) The supervisor must submit a supervisory agreement form, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.

(l) A supervisory agreement form must be submitted for subsequent supervisors and settings, before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board may not be counted toward licensure.

(m) ~~[(k)]~~ An applicant coming from another state, who has earned post graduate supervised experience in another state, may submit either their application file from the other state showing their post graduate experience or have their experience documented on this state's [states] board forms.

§681.93. *Supervisor Requirements.*

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

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth below; and shall submit a \$100.00 processing fee. The supervision course must be taken within two years of application or reapplication for the supervisor status. Licensees who are in an accredited doctorate program are exempt from the 2 year time limit. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the

regular license. A renewal application must be filed with the board, accompanied by a \$100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

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

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

(d) A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the site where the hours were accrued and the content of the session.

(e) - (l) (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 November 28, 2011.

TRD-201105206

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER H. LICENSING

22 TAC §681.112

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

The amendment affects Occupations Code, Chapter 503.

§681.112. *Provisional Licensing.*

(a) The board may grant a provisional license to a person who holds, at the time of application, a license as a counselor or art therapist issued by another state, territory, or jurisdiction that is acceptable to the board. An applicant for a provisional license must:

(1) (No change.)

(2) be licensed in good standing as a counselor or art therapist in another state, territory, or jurisdiction that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act and submit documentation of such licensure including a letter of good standing and a copy of the licensure file from the other state, territory or jurisdiction or from the National Credentials Registry ~~[and a letter of good standing];~~ and

(3) have passed the National Counselor Exam and the Texas Jurisprudence Exam ~~[required examinations].~~

(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 November 28, 2011.

TRD-201105207

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §681.125

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

The amendment affects Occupations Code, Chapter 503.

§681.125. *Inactive Status.*

(a) - (d) (No change.)

(e) A person must notify the board in writing to return to active status. Active status shall begin after receipt of proof of successful completion of the Texas Jurisprudence Examination, completion of 24 hours continuing education including 4 hours in counselor ethics, within the 2 [two] years preceding reinstatement of active status and payment of applicable fees.

(f) (No change.)

(g) A person previously approved as a supervisor whose supervisor status has expired for 2 or more years or [professional counselor license has] been inactive for 2 or more [more than two] years and who wishes to resume the supervisor status or [resumes] active license status may become a supervisor by again completing a current supervisor course [the supervision requirements of the board].

(h) (No change.)

(i) An LPC Intern's license shall not exceed 4 years on inactive status. Should the Intern fail to return to active status within 4 years, the license will be considered null and void and the person will be required to reapply for licensure under current rules.

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 November 28, 2011.

TRD-201105208

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §681.172

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The new rule affects Occupations Code, Chapter 503.

§681.172. *Due Process Following Violation of an Order.*

(a) A licensee who is alleged to be in violation of a board disciplinary order shall be provided with the following due process. The department will send a Notice of Violation of the Order to the licensee. The Notice of Violation shall include:

(1) a brief statement of the acts or omissions believed to constitute a violation, including information sufficient to apprise the licensee about the date and nature of the violation;

(2) a statement that, within 10 days of receiving the Notice of Violation, the licensee must respond in writing to explain why the licensee believes he or she did not violate the Order, or if such violations did occur, why the disciplinary action proposed in the Order should not be imposed; and

(3) a statement in large bold type that, if the licensee fails to respond, the disciplinary action described in the Order will be imposed, and further that additional disciplinary actions may be taken if the conduct constituting the violation of the Order also violates a board rule or statute: "FAILURE TO RESPOND. YOUR FAILURE TO RESPOND WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS IN THIS NOTICE OF VIOLATION WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE IMPOSED BY DEFAULT. ADDITIONAL DISCIPLINARY ACTIONS MAY BE TAKEN."

(b) When the department receives the licensee's written response, the executive director and board chair will review the response and decide whether there are sufficient grounds to find that the Order was violated and, if so, whether the disciplinary action provided in the Order should be imposed.

(c) The executive director and the board chair shall write and submit their decision to the board for final action.

(d) A decision to impose or to forego imposing disciplinary action under the terms of the Order does not preclude the board from initiating disciplinary action independent of the Order if the alleged conduct may constitute a violation of statute or rules.

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 November 28, 2011.

TRD-201105209

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.1, 741.13, 741.44, 741.61, 741.62, 741.64, 741.81, 741.121, 741.141, 741.162, 741.191 and 741.192 and new §§741.66, 741.86, 741.142, 741.163, 741.203, and 741.204, concerning the regulation and licensure of speech-language pathologists and audiologists.

BACKGROUND AND PURPOSE

The proposed rules are intended to update the rules so that they reflect the rulemaking required by the recent legislation, 82nd Texas Legislature, Regular Session, 2011, amending Occupations Code, §401.202, concerning the continuation and functions of the State Board of Examiners for Speech-Language Pathology and Audiology.

SECTION-BY-SECTION SUMMARY

The amendment to §741.1 is proposed to clarify several definitions related to the functions of the board.

The amendment to §741.13 is proposed to clarify that the governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

The amendments to §741.44 adds wording clarifying that the supervisor can be either a speech-language pathologist or an audiologist and deletes wording that should be in another subchapter.

The amendment to §741.61 is proposed to clarify the national accrediting organization that is approved by the board and recognized by the United States Secretary of Education.

The amendment to §741.62 is proposed to clarify the time frame for submission of an application after completing the supervised professional experience.

The amendment to §741.64 outlines requirements for licensure of an Assistant in Speech-Language Pathology.

New §741.66 addresses the licensing process for speech-language pathology professionals seeking licensure of spouses of members of the military.

The amendment to §741.81 is proposed to clarify the national accrediting organization that is approved by the board and recognized by the United States Secretary of Education and to remove obsolete language.

New §741.86 addresses the licensing process for audiology professionals seeking licensure of spouses of members of the military.

The amendment to §741.121 is proposed to include the new score for the audiology examination.

The amendment to §741.141 is proposed to clarify the expiration date of an intern's license.

New §741.142 addresses the criminal history record information process for licensure.

The amendment to §741.162 is proposed to clarify that the ethics clock hours are per renewal cycle.

New §741.163 addresses the criminal history record information process for renewal of a license.

The amendment to §741.191 is proposed to clarify the recusal of a board member process.

The amendment to §741.192 adds language for the board to assess an administrative penalty to an audiologist and to order a refund to a consumer who returns a hearing instrument during the 30-day trial period.

New §741.203 addresses the process of board-ordered refunds.

New §741.204 addresses the process of cease and desist orders.

FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Parsons has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for micro-businesses and small businesses is not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The proposal does not impose additional fees. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of speech-language pathologists and audiologists in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would other-

wise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through email to speech@dshs.state.tx.us. Please write "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the words and terms below shall have the following meanings. Refer to Texas Occupations Code, §401.001, for definitions of additional words and terms.

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

(5) Department--Department of State Health Services.

(6) ~~[(5)]~~ Extended absence--More than two consecutive working days for any single continuing education experience.

(7) ~~[(6)]~~ Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(8) ~~[(7)]~~ Fitting and dispensing hearing instruments--The measurement of human hearing using professionally accepted practices to select, adapt, or sell a hearing instrument.

(9) ~~[(8)]~~ Health care professional--An individual required to be licensed under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.

(10) ~~[(9)]~~ Hearing instrument--Any wearable instrument or [A] device designed for, or represented as; aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord. [offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.]

(11) ~~[(10)]~~ Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(12) ~~[(11)]~~ Licensed Assistant in Speech-Language Pathology--An individual who provides speech language pathology support services under supervision of a licensed speech-language pathologist.

(13) ~~[(12)]~~ Licensed Assistant in Audiology--An individual who provides audiological support to clinical programs under supervision of a licensed audiologist.

(14) ~~[(13)]~~ Sale or purchase--Includes the sale, lease or rental of a hearing instrument or augmentative communication device to a member of the consuming public who is a user or prospective user of a hearing instrument or augmentative communication device.

(15) ~~[(14)]~~ Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to an individual from a provider through hardware or internet connection.

(16) ~~[(15)]~~ Telepractice--The practice of telehealth.

(17) ~~[(16)]~~ Under the direction of--The licensed speech-language pathologist or audiologist directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

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 November 21, 2011.

TRD-201105143

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER B. THE BOARD

22 TAC §741.13

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.13. Transaction of Official Business.

(a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

(b) ~~[(a)]~~ The board shall elect, by a simple majority vote of those members present, ~~[a presiding officer,]~~ an assistant presiding officer, and a secretary-treasurer at the meeting held nearest to January 1st. If a vacancy occurs in any of the offices at any other time, it shall be filled by a simple majority vote of those members present at any board meeting.

(c) ~~[(b)]~~ The executive director shall prepare and submit an agenda to the board prior to each meeting. The agenda shall include:

(1) items required by law;

(2) items requested by members; and

(3) other items of board business approved for discussion by the presiding officer.

(d) [(e)] The board shall make all official decisions according to parliamentary procedure as set forth in Robert's Rules of Order Revised. If a question arises concerning interpretation of Robert's Rules of Order Revised, the presiding officer or assistant presiding officer shall make the decision.

(e) [(d)] The board shall not be bound in any way by any statement or action on the part of any board member, committee, or staff member except when a statement or action is in pursuance of the specific instruction of the board.

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 November 21, 2011.

TRD-201105144
Kerry Ormson, Ed.D, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 8, 2012
For further information, please call: (512) 776-6972



SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF SUPERVISORS

22 TAC §741.44

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.44. *Requirements; Duties, and Responsibilities of Supervisors.*

(a) A licensee must have three years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's internship year shall be counted toward the three years of experience. If the licensee [licensed speech-language pathologist] does not have the required experience, he or she may submit a written request outlining his or her qualifications and the reason for the request. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

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

[(e) A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial individual educational plan or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.]

[(f) A licensed assistant shall not use "SLP-A" or "STA" as indicators for their credentials. Licensees shall use "Assistant SLP" or "SLP Assistant" to shorten their professional title.]

[(g) A licensed intern shall not use "SLP-CFY" or "SLP-CF" as indicators for their credentials. Licensees shall use "Intern SLP" or "SLP Intern" to shorten their professional title.]

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

Filed with the Office of the Secretary of State on November 21, 2011.

TRD-201105145
Kerry Ormson, Ed.D, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 8, 2012
For further information, please call: (512) 776-6972



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61, 741.62, 741.64, 741.66

STATUTORY AUTHORITY

The amendments and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments and new rule affect Texas Occupations Code, Chapter 401.

§741.61. *Requirements for a Speech-Language Pathology License.*

(a) (No change.)

(b) The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the board and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C., §1001 et seq.). [the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.]

(1) - (5) (No change.)

(c) - (g) (No change.)

§741.62. *Requirements for an Intern in Speech-Language Pathology License.*

(a) - (n) (No change.)

(o) If the intern holds a valid license, the [The] intern may continue to practice under supervision for up to 30 days after the board office receives the Report of Completed Internship Form. [if he or she holds a valid intern license while awaiting the processing of the speech-language pathology license or the temporary certificate of registration in speech-language pathology as follows:]

[(1) The current supervisor shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the speech-language pathology license or the temporary certificate of registration.]

~~[(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.]~~

~~[(3) Supervision required while awaiting approval of either the speech-language pathology license or the temporary certificate of registration shall be consistent with supervision requirements established in subsection (h) of this section.]~~

(p) If the intern holds a valid license, the intern may continue to practice under supervision for up to 30 days after the board office receives the Report of Completed Internship.

(q) A licensed intern shall not use "SLP-CFY" or "SLP-CF" as indicators for their credentials. Licensees shall use "Intern SLP" or "SLP Intern" to shorten their professional title.

§741.64. Requirements for an Assistant in Speech-Language Pathology License.

(a) - (h) (No change.)

(i) The licensed assistant shall not:

(1) - (15) (No change.)

(16) provide client or family counseling; ~~[ø]~~

(17) write or sign any formal document relating to the reimbursement for or the provision of speech-language pathology services; or ~~[r]~~

(18) use "SLP-A" or "STA" as indicators for their credentials. Licensees shall use "Assistant SLP" or "SLP Assistant" to shorten their professional title.

(j) - (m) (No change.)

§741.66. Speech-Language Pathology Licensing of Spouses of Members of the Military.

(a) This section sets out the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure base on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

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 November 21, 2011.

TRD-201105146

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §741.81, §741.86

STATUTORY AUTHORITY

The amendment and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment and new rule affect Texas Occupations Code, Chapter 401.

§741.81. Requirements for an Audiology License.

(a) (No change.)

(b) The ~~[master's degree (awarded prior to 2007) or the]~~ doctoral degree in audiology or related hearing sciences shall be completed at a college or university that has a program accredited by a national accrediting organization that is approved by the board and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C., §1001 et seq.). ~~[the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.]~~

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

~~[(e) In the event the applicant passed the examination referenced in subsection (d) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the audiology license. The applicant shall obtain the intern license as required by §741.82 of this title (relating to Requirements for an Intern in Audiology License) prior to repeating the internship. The applicant may appeal to the board for waiver of the requirement to repeat the internship.]~~

~~(e) [(f)] An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence or the American Board of Audiology (ABA) certification may have the certificate reinstated and apply for licensure under §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists).~~

§741.86. Audiology Licensing of Spouses of Members of the Military.

(a) This section sets out the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license

issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure base on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

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 November 21, 2011.

TRD-201105147

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.121

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.121. Examination Administration.

(a) (No change.)

(b) An applicant shall have passed the examination: ~~if the score is 600 or above.~~

(1) in Speech-Language Pathology, if the score is 600 or above;

(2) in Audiology (for examinations taken before November 21, 2011), if the score is 600 or above; or

(3) in Audiology (for examinations taken after November 20, 2011), if the score is 170 or above.

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 November 21, 2011.

TRD-201105148

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



SUBCHAPTER K. ISSUANCE OF LICENSE

22 TAC §741.141, §741.142

STATUTORY AUTHORITY

The amendment and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment and new rule affect Texas Occupations Code, Chapter 401.

§741.141. Issuance of License.

(a) (No change.)

(b) The board shall issue an initial license to an applicant for an intern in speech-language pathology or an intern in audiology license after the fee, forms, and other documentation have been received and approved by the board or board staff. The license shall expire two years [~~one year~~] past the effective date.

(c) - (g) (No change.)

§741.142. Criminal History Record Information Requirement for License Issuance.

(a) An applicant for a license shall submit a completed legible set of fingerprints on a form prescribed by the board, to the board or the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) A person who does not comply with the requirements in subsection (a) of this section shall not be issued a license by the board.

(c) A criminal history check of each applicant for a license shall be conducted by the board using information:

(1) provided by the individual seeking licensure; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Government Code, Chapter 411.

(d) On the board's behalf, the Department of State Health Services may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

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

Filed with the Office of the Secretary of State on November 21, 2011.

TRD-201105149
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Presiding Officer
State Board of Examiners for Speech-Language Pathology and
Audiology
Earliest possible date of adoption: January 8, 2012
For further information, please call: (512) 776-6972

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State Board of Examiners for Speech-Language Pathology and
Audiology
Earliest possible date of adoption: January 8, 2012
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**SUBCHAPTER L. LICENSE RENEWAL AND
CONTINUING EDUCATION**

22 TAC §741.162, §741.163

STATUTORY AUTHORITY

The amendment and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment and new rule affect Texas Occupations Code, Chapter 401.

§741.162. Requirements for Continuing Professional Education.

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

(c) A minimum of twenty clock hours (two CEUs) shall be required to renew a license issued for a two-year term. The holder of dual licenses, meaning both a speech-language pathology license and an audiology license, shall be required to earn 30 clock hours (three CEUs) to renew a license issued for a two-year term. Effective April 30, 2009, a license holder must complete a minimum of 2.0 clock hours (0.2 CEUs) in ethics as part of the continuing education requirement each renewal term.

(d) - (n) (No change.)

§741.163. Criminal History Record Information Requirement for License Renewal.

(a) An applicant renewing a license shall submit a completed legible set of fingerprints on a form prescribed by the board, to the board or the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureaus of Investigations.

(b) A person who does not comply with the requirements in subsection (a) of this section shall not received a license renewal.

(c) The requirements of this section do not apply to a license holder who has previously submitted fingerprints under this section or §741.142 of this title (relating to Criminal History Record Information Requirement for License Issuance).

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 November 21, 2011.

TRD-201105151

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**SUBCHAPTER N. COMPLAINTS,
VIOLATIONS, PENALTIES, AND
DISCIPLINARY ACTIONS**

22 TAC §§741.191, 741.192, 741.203, 741.204

STATUTORY AUTHORITY

The amendments and new rules are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments and new rules affect Texas Occupations Code, Chapter 401.

§741.191. Complaint Procedures.

(a) A board member who participated in the investigation of a complaint or an informal settlement negotiations regarding the complaint:

(1) may not vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting why the member is prohibited from voting on the matter.

(b) A statement under subsection (a)(2) of this section shall be entered into the minutes of the meeting.

(c) ~~[(a)]~~ A person wishing to report an alleged violation of the Act or the rules by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(d) ~~[(b)]~~ Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant along with an official form which the complainant must complete and return to the board before further action may be taken. The executive director may accept an anonymous complaint if there is sufficient information for the investigation.

(e) ~~[(c)]~~ A complaints committee shall be appointed to work with the executive director to:

(1) review and determine whether each complaint fits within the category of a serious complaint affecting the health and safety of clients or other persons;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) resolve the issues of the complaint which arise under the Act or this chapter.

(f) ~~[(d)]~~ Prior to or during an investigation, the executive director or his or her designee shall request a response from the licensee or person against whom an alleged violation has been filed to gather

information required by the complaints committee of the board. The licensee or person against whom an alleged violation has been filed must respond within 15 working days of the executive director's request.

(g) [(e)] If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the complaints committee.

(h) [(f)] If it is determined that the matters in the complaint are jurisdictional, the complaint shall be investigated. The executive director or the committee may initiate the investigation.

(i) [(g)] If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(j) [(h)] If the board has the authority to resolve a written complaint, at least quarterly and until final disposition of the complaint, the board shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(k) [(i)] After review of a complaint or allegation that is not resolved by the committee, the committee may:

- (1) dismiss the complaint;
- (2) revoke, or suspend, or deny the license; or
- (3) take other appropriate action as authorized by law be taken.

§741.192. Disciplinary Action; Notices.

(a) The board may deny, revoke, temporarily suspend, or suspend a license, assess an administrative penalty, order a refund, or may probate disciplinary action, or may issue a reprimand to a person who:

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

§741.203. Board Ordered Refund.

(a) The board may order an audiologist to pay a refund to a consumer who returns a hearing instrument(s) during the 30-day trial period required by the rules adopted under this chapter.

(b) If the 30-day period ends on a Sunday or a holiday, then the 30-day period shall not expire until the next business day.

(c) The licensee shall have 30 days from the date of a consumer's return of the hearing instrument(s) to reimburse the consumer.

(d) In the event that the licensee fails to reimburse the consumer within the prescribed period in subsection (c) of this section, then the licensee may be subject to additional penalties and/or sanctions provided for under the Act and rules.

§741.204. Cease and Desist Order.

(a) If it is determined by the board or the board's designee that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, or another state statute or rule relating to the practice of speech-language pathology and/or audiology, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

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 November 21, 2011.

TRD-201105152

Kerry Ormson, Ed.D, Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 776-6972



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board ("TWDB") proposes an amendment to §358.6, regarding Water Loss Audits. Related amendments to §363.12, regarding General, Legal, and Fiscal Information; §371.34, regarding Required Water Conservation Plan; and §375.43, regarding Required Water Conservation Plan are proposed elsewhere in this issue.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects all entities receiving financial assistance from the TWDB. Currently, all retail public utilities that provide potable water are required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding will be required to perform and submit an annual water loss audit. Entities that do not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF PROPOSED AMENDMENT.

§358.6. Water Loss Audits.

Under §358.6, all retail public utilities that provide potable water service are required to perform and submit to the TWDB a water loss audit every five years, by each March 31st, computing the utility's most recent annual system water loss under methods developed by the TWDB. Also, under the current rule an entity that fails to submit the required water loss audit is ineligible for financial assistance for a water supply project from all of the TWDB's loan programs except the Rural Water Assistance Fund (RWAFF) and the Water Infrastructure Fund (WIF). Under the amendment, both RWAFF and WIF will be included.

The proposed amendment of §358.6(a) will provide that retail public utilities that provide potable water and that receive TWDB financial assistance will be required to perform and provide an annual water loss audit in accordance with the requirements of Texas Water Code §16.0121. Retail public utilities that received financial assistance from the TWDB prior to September 1, 2011, and that have an outstanding loan from the TWDB or active loan forgiveness or grant agreement with the TWDB shall submit a water loss audit to the executive administrator by May 1, 2013, and by May 1st annually thereafter during the term of the loan or the loan forgiveness or grant agreement. This deadline is required in Section 2 of House Bill 3090. Retail public utilities that receive financial assistance from the TWDB after September 1, 2011, shall submit a water loss audit no later than the next May 1st that is at least one year after the receipt of financial assistance and by every May 1st thereafter during the term of the loan or the loan forgiveness or grant agreement. This deadline allows each retail public utility at least one year after closing its financial assistance to collect data necessary for its water loss audit. Entities that do not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years, beginning May 1, 2016, and every five years thereafter. The proposed amendment also provides that the methodology for the water loss audits will be developed by the Executive Administrator, rather than the governing Board of the TWDB.

The proposed amendment of §358.6(b) adds references to Texas Water Code, Chapter 15, Subchapters Q and R (the Water Infrastructure Fund and the Rural Water Assistance Fund) to the list of TWDB financial assistance programs for which an entity is ineligible if it has not submitted a complete water loss audit, because under Texas Water Code §16.053(j), an applicant for financial assistance from either of these two programs is required to submit a water loss audit. The proposed amendment also deletes the reference to Subchapter P (the Colonia Self Help Program) because an applicant for financial assistance from this program is not required to submit a water loss audit under Texas Water Code §16.053(j).

The proposed amendment of §358.6 also deletes the word "form" from the phrase "water loss audit form," as it is unnecessary.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Melanie Callahan, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments as a result of the proposed amendment. For the first five years the rule is in effect, there is no expected additional cost to state or local governments resulting from its administration. The rule is not expected to result in reductions in costs to either state or local governments. The rule is not expected to have any impact on state or local revenues. The rule does not require any significant increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule. The rule affects only those entities that are receiving financial assistance or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on the five-year basis for retail public utilities providing potable water that are not receiving financial assistance from the TWDB.

PUBLIC BENEFITS AND COSTS.

Ms. Callahan also has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the rulemaking as it supports financing for water projects at a cost generally below the market rate at which the entity would be able to finance the project. There will be no significant economic cost to persons required to comply with the rule. The rule affects only those entities are receiving or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on a five-year basis.

LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed amendment does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment because the rule is not regulatory and is not directed at private small or micro-businesses. The TWDB also has determined that there is no anticipated significant economic cost to persons who are required to comply with the amendment as proposed. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require retail public utilities providing potable water that receive financial assistance from the TWDB to perform and submit a water loss audit on an annual basis rather than on a five-year basis, as is currently required for those entities. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS.

The TWDB has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The TWDB has determined that the promulgation and enforcement of this proposed rulemaking will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007, or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed amendment will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

STATUTORY AUTHORITY.

The amendment is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapters 15, 16, and 17.

§358.6. *Water Loss Audits.*

(a) In accordance with Texas Water Code §16.0121, ~~Every five years,~~ a retail public utility, as defined by Texas Water Code §13.002, that ~~which~~ provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit ~~form~~ computing the utility's ~~most recent annual~~ system water loss during the preceding year.

(1) The water loss audit shall be performed in accordance with methodologies developed by the executive administrator ~~board~~ based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator ~~board~~. At least one year prior to the required filing, the executive administrator will provide the necessary forms and methodologies approved by the board to the retail public utility via first-class mail, electronic mail, or both. ~~Retail public utilities shall submit the water loss audit form to the executive administrator by the 31st day of March. The first water loss audit form shall be submitted no later than March 31, 2006.~~

(2) Every five years, a retail public utility that provides potable water and that does not receive financial assistance from the board shall perform and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding year. The water loss audit is due by May 1, 2016, and May 1st every five years thereafter.

(3) A retail public utility providing potable water that receives financial assistance from the board shall perform and file a water loss audit with the executive administrator annually. For purposes of this rule, a retail public utility has received financial assistance upon closing and funding of a loan, loan forgiveness, or grant from the board. A retail public utility providing potable water that received financial assistance from the board prior to September 1, 2011, and that has an outstanding loan from the board or active loan forgiveness or grant agreement with the board shall submit a water loss audit to the executive administrator by May 1, 2013, and by May 1st annually thereafter during the term of the loan or the loan forgiveness or grant agreement. A retail public utility providing potable water that receives financial assistance from the board after September 1, 2011, shall submit a water loss audit no later than May 1st after the passage of one year following the receipt of financial assistance, and by May 1st annually thereafter during the term of the loan or the loan forgiveness or grant agreement. The water loss audit ~~form~~ may be submitted electronically.

(4) The executive administrator shall compile the information included in the water loss audits according to category of retail public utility and according to regional water planning area.

(b) The executive administrator shall determine if the water loss audit ~~form~~ is administratively complete. A water loss audit ~~form~~ is administratively complete if all required responses are provided. In the event the executive administrator determines that a retail public utility's water loss audit ~~form~~ is incomplete, the incomplete audit ~~form~~ will be returned to the utility. The retail public utility will then have 30 days from the new postmark date or electronic mail sent date to complete the items found deficient and return a complete water loss audit ~~form~~ to the executive administrator. A retail public utility that provides potable water that fails to submit a water loss audit ~~form~~ or that fails to timely correct a water loss audit ~~form~~ that is not administratively complete is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, J, O, Q, and R ~~and P~~; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water

loss audit ~~form~~ has been filed with and accepted by the executive administrator.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105189

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-8061



CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 2. GENERAL APPLICATION

PROCEDURES

31 TAC §363.12

The Texas Water Development Board ("TWDB") proposes an amendment to §363.12, regarding General, Legal, and Fiscal Information. Related amendments to §358.6, regarding Water Loss Audits; §371.34, regarding Required Water Conservation Plan; and §375.43, regarding Required Water Conservation Plan are proposed elsewhere in this issue.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects all entities receiving financial assistance from the TWDB. Currently, all retail public utilities that provide potable water are required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding will be required to perform and submit an annual water loss audit. Entities that do not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF PROPOSED AMENDMENTS.

§363.12. *General, Legal, and Fiscal Information.*

The proposed amendment to §363.12 requires an applicant that is a retail public utility that provides potable water to submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Melanie Callahan, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments as a result of the proposed amendment. For the first five years the rule is in effect, there is no expected additional cost to state or local governments resulting from its administra-

tion. The rule is not expected to result in reductions in costs to either state or local governments. The rule is not expected to have any impact on state or local revenues. The rule does not require any significant increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule. The rule affects only those entities that are receiving financial assistance or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on the five-year basis for retail public utilities providing potable water that are not receiving financial assistance from the TWDB.

PUBLIC BENEFITS AND COSTS.

Ms. Callahan also has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the rulemaking as it supports financing for water projects at a cost generally below the market rate at which the entity would be able to finance the project. There will be no significant economic cost to persons required to comply with the rule. The rule affects only those entities are receiving or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on a five-year basis.

LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed amendment does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment because the rule is not regulatory and is not directed at private small or micro-businesses. The TWDB also has determined that there is no anticipated significant economic cost to persons who are required to comply with the amendment as proposed. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require retail public utilities providing potable water that receive financial assistance from the TWDB to perform and submit a water loss audit on an annual basis rather than on a five-year basis, as is currently required for those entities. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS.

The TWDB has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The TWDB has determined that the promulgation and enforcement of this proposed rulemaking will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007, or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed amendment will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

STATUTORY AUTHORITY.

The amendment is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapters 15, 16, and 17.

§363.12. *General, Legal, and Fiscal Information.*

An application will be in the form and in numbers prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete applications. The following are required to be considered an administratively complete application:

(1) (No change.)

(2) The following information is required on all applications to the board for financial assistance.

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

(E) Required water loss audit. An applicant that is a retail public utility that provides potable water shall submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

(F) [(E)] Funding from other sources. If additional funds are necessary to complete the project, or if the applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, an applicant shall submit a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

(G) [(F)] Additional application information. An applicant shall submit any additional information requested by the executive administrator as necessary to complete the financial, legal, engineering, and environmental reviews.

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 November 28, 2011.

TRD-201105190

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-8061



CHAPTER 371. DRINKING WATER STATE REVOLVING FUND SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §371.34

The Texas Water Development Board ("TWDB") proposes an amendment to §371.34, regarding Required Water Conservation Plan. Related amendments to §358.6, regarding Water Loss Audits; §363.12, regarding General, Legal and Fiscal Information; and §375.43, regarding Required Water Conservation Plan are proposed elsewhere in this issue.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects all entities receiving financial assistance from the TWDB. Currently, all retail public utilities that provide potable water are required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding will be required to perform and submit an annual water loss audit. Entities that do not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF PROPOSED AMENDMENT.

§371.34. Required Water Conservation Plan.

The proposed amendment of §371.34 adds "and Water Loss Audit" to the title of the rule and adds a requirement that an applicant that is a retail public utility that provides potable water must submit its most recent water loss audit in accordance with §358.6 (relating to Water Loss Audits), unless it has previously been submitted.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Melanie Callahan, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments as a result of the proposed amendment. For the first five years the rule is in effect, there is no expected additional cost to state or local governments resulting from its administration. The rule is not expected to result in reductions in costs to either state or local governments. The rule is not expected to have any impact on state or local revenues. The rule does not require any significant increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule. The rule affects only those entities that are receiving financial assistance or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on the five-year basis for retail public utilities providing potable water that are not receiving financial assistance from the TWDB.

PUBLIC BENEFITS AND COSTS.

Ms. Callahan also has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the rulemaking as it supports financing for water projects at a cost generally below the market rate at which the entity would be able to finance the project. There will be no significant economic cost to persons required to comply with the rule. The rule affects only those entities are receiving or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121

that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on a five-year basis.

LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed amendment does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment because the rule is not regulatory and is not directed at private small or micro-businesses. The TWDB also has determined that there is no anticipated significant economic cost to persons who are required to comply with the amendment as proposed. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require retail public utilities providing potable water that receive financial assistance from the TWDB to perform and submit a water loss audit on an annual basis rather than on a five-year basis, as is currently required for those entities. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS.

The TWDB has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The TWDB has determined that the promulgation and enforcement of this proposed rulemaking will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007, or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed amendment will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

STATUTORY AUTHORITY.

The amendment is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapters 15, 16, and 17.

§371.34. Required Water Conservation Plan and Water Loss Audit.

(a) Water Conservation Plan. An Applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(b) Water Loss Audit. An Applicant that is a retail public utility that provides potable water shall submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

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 November 28, 2011.

TRD-201105191

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-8061



CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §375.43

The Texas Water Development Board ("TWDB") proposes amendments to §375.43, regarding Required Water Conservation Plan. Related amendments to §358.6, regarding Water Loss Audits; §363.12, regarding General, Legal, and Fiscal Information; and §371.34, regarding Required Water Conservation Plan are proposed elsewhere in this issue.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects all entities receiving financial assistance from the TWDB. Currently, all retail public utilities that provide potable water are required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding will be required to perform and submit an annual water loss audit. Entities that do not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF PROPOSED AMENDMENT.

§375.43. *Required Water Conservation Plan.*

The proposed amendment of §375.43 adds "and Water Loss Audit" to the title of the rule and adds a requirement that an applicant that is a retail public utility that provides potable water must submit its most recent water loss audit in accordance with §358.6 (relating to Water Loss Audits), unless it has previously been submitted.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Melanie Callahan, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments as a result of the proposed amendment. For the first five years the rule is in effect, there is no expected additional cost to state or local governments resulting from its administration. The rule is not expected to result in reductions in costs to either state or local governments. The rule is not expected to have any impact on state or local revenues. The rule does

not require any significant increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule. The rule affects only those entities that are receiving financial assistance or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on the five-year basis for retail public utilities providing potable water that are not receiving financial assistance from the TWDB.

PUBLIC BENEFITS AND COSTS.

Ms. Callahan also has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the rulemaking as it supports financing for water projects at a cost generally below the market rate at which the entity would be able to finance the project. There will be no significant economic cost to persons required to comply with the rule. The rule affects only those entities are receiving or will receive financial assistance from the TWDB. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require these retail public utilities to perform and submit a water loss audit on an annual basis rather than on a five-year basis.

LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed amendment does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment because the rule is not regulatory and is not directed at private small or micro-businesses. The TWDB also has determined that there is no anticipated significant economic cost to persons who are required to comply with the amendment as proposed. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require retail public utilities providing potable water that receive financial assistance from the TWDB to perform and submit a water loss audit on an annual basis rather than on a five-year basis, as is currently required for those entities. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS.

The TWDB has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The TWDB has determined that the promulgation and enforcement of this proposed rulemaking will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007, or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed amendment will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

STATUTORY AUTHORITY.

The amendment is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapters 15, 16, and 17.

§375.43. *Required Water Conservation Plan and Water Loss Audit.*

(a) Water Conservation Plan. An Applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(b) Water Loss Audit. An Applicant that is a retail public utility that provides potable water shall submit its most recent water loss

audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

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 November 28, 2011.

TRD-201105192

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 8, 2012

For further information, please call: (512) 463-8061



ADOPTED RULES

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.24

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") adopts new 10 TAC Chapter 1, Subchapter A, §1.24, concerning Foreclosure Data Collection, with changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6364).

The purpose of this new section is to implement the requirements of new Senate Bill 1233 which amended Chapter 51 of the Texas Property Code by adding §51.0022 requiring the collection of certain data regarding foreclosures of residential property across the State. The new law requires the Department to promulgate forms to be used by lien holders across the State when filing foreclosure notices against residential properties and by sheriffs and trustees conducting foreclosure sales of residential properties. The only information permitted to be collected by the Department is the ZIP code of the property. The forms are to be submitted to the clerk's office in the county where the notice was filed, or the foreclosure was conducted. On the first business day of the month (approximately thirty (30) days) after the forms have been submitted to the clerk, the county clerk completes summary forms to be forwarded to the Department. The Department is required to submit the information received to the Legislature on a quarterly basis. When adopted, the new rule will apply only to notices of sale filed or completed sales filed on or after January 1, 2012.

The Department accepted comments to the proposed rule in writing by letter, fax and email. This document provides the Department's response to all comments received on the rule. During the public comment period from September 30, 2011 to October 19, 2011, TDHCA received public comment from fourteen (14) county clerks or county clerks' offices. The comments have been sorted by topic and summarized. Comments were received from Aransas, Brazoria, Cass, Howard, Hunt, Kerr, Kimble, Montgomery, Navarro, Nolan, Orange, Rusk, Shelby, and Williamson counties. Some of the comments resulted in changes to the rule.

REASONED RESPONSE TO PUBLIC COMMENT ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 1, SUBCHAPTER A, §1.24, CONCERNING FORECLOSURE DATA COLLECTION.

COMMENT 1. Comments from the county clerk's office of Montgomery County suggested that the rule does not specify in which record set the Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form need to be filed; comments further suggested that according to Texas Property Code, all documents filed with the county clerk that deal with real property must be acknowledged or sworn to according to law.

STAFF RESPONSE. The Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form are not filed in property records, so they do not need to be acknowledged. The Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form are submitted to the county clerk for the purposes of completing the Summary Form for Notices of Sale and the Summary Form for Completed Sales. The rule has been revised throughout to reflect that the forms are not filed with the county clerk, but are submitted to the county clerk. This change applied to §1.24(b)(1) - (4), (d)(1), (e)(1) - (2), and (f).

COMMENT 2. The county clerk's office of Cass County asked if a Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form are recorded in the Official Public Record when they are filed; how long should the filings be kept by the county clerk; and should a copy be sent to TDHCA upon filing or should it be kept at the county clerk's office?

STAFF RESPONSE. The Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form are submitted to the county clerk, not filed with the county clerk. The county clerk uses them to prepare the Summary Form for Notices of Sale and the Summary Form for Completed Sales, which are then transmitted to TDHCA. The forms are not recorded in the official public record. The rule has been revised to reflect that the forms are not filed with the county clerk, but are submitted to the county clerk. This change applied to §1.24(b)(1) - (4), (d)(1), (e)(1) - (2), and (f). Per the proposed rule, §1.24(f), county clerks should follow their own retention schedules for the keeping of Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form. The Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form should not be sent to TDHCA, neither as original nor as a copy. However, the Summary Form for Notices of Sale and the Summary Form for Completed Sales are transmitted to TDHCA on the first business day of the month by the county clerk. Staff revised §1.24(f) for clarity, adding the second sentence in the following paragraph: "Persons filing a notice of sale or completed sale shall also submit the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms, as appropriate, with the county clerk. County clerks should retain these forms and the forms are not to be sent to TDHCA. County clerks should follow their own retention schedules in the keeping of these forms."

COMMENT 3. Comments from the county clerks' offices of Aransas, Brazoria, Cass, Howard, Hunt, Kerr, Kimble, Navarro, Nolan, Rusk, Shelby, and Williamson Counties suggested the

proposed rule adds additional burden of manpower and finances on the county clerks. There are numerous foreclosures that are hard to track for short-staffed offices. County clerks do not have time for additional reporting duties.

STAFF RESPONSE. While TDHCA understands concerns regarding lack of resources, Senate Bill 1233 is now State law and it is clear in its mandate for TDHCA to promulgate a rule implementing the Bill. In an effort to reduce the daily additional reporting duties, Staff amended the proposed rule to replace the definitions of summary forms from "received within the last thirty (30) days by the county clerk" to "received during the previous month (approximately thirty (30) days) by the county clerk" throughout the rule. In addition, the reporting to TDHCA (§1.24(d)(1)) was changed from "No later than the 30th day after receipt of a Notice of Sale Foreclosure Form or a Completed Sale Foreclosure Form, the county clerk will submit the appropriate summary form to TDHCA" to "On the first business day of the month, the county clerk will submit the appropriate summary form to TDHCA." In this way the county clerk can upload the Summary Form for Notices of Sale and the Summary Form for Completed Sales to TDHCA on the first business day of the month, instead of within 30 business days. These changes applied to §1.24(b)(3) and (4) and (d)(1) and (2). In addition, references to the Web form in §1.24 have been changed to Web interface. The Summary Form for Completed Sales and the Summary Form for Notices of Sales can be uploaded directly to TDHCA, eliminating data entry required for county clerks on the first business day of the month and lessening the time requirements needed for reporting. These changes applied to §1.24(e)(2) and (g).

COMMENT 4. Comments from the county clerks' offices of Brazoria and Montgomery Counties suggested the information collected by §1.24 is too limited to give an accurate picture of foreclosures. With the information provided on the draft forms, it would be impossible to link what filings were for what property. Collection of the property description or recording number deed of trust or deed that gives a property description would be more accurate.

STAFF RESPONSE. Per Senate Bill 1233 which adds §51.0022(a) - (e) to the Texas Property Code, the ZIP code, whether the property is residential, and the date are the only pieces of information that TDHCA is allowed to request on the form. It will not be possible to link the submission of TDHCA's form to property from the information collected in §1.24(c).

COMMENT 5. Comment from the county clerk's office of Brazoria County asked if the Completed Sale Foreclosure Form tied to the Notice of Sale Foreclosure Form that may have been filed for the same property?

STAFF RESPONSE. No. Senate Bill 1233 does not require the notice of sale and completed sale forms to relate to one another. The only information requested on the Completed Sale Foreclosure Form and the Notice of Sale Foreclosure Form is listed in §1.24(c).

COMMENT 6. Comments from the county clerk's office of Orange County asked if the date and the ZIP code are the only information being collected on the Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form?

STAFF RESPONSE. Per Senate Bill 1233 which adds §51.0022(a) - (e) to the Texas Property Code, the ZIP code, whether the property is residential, and the date are the only pieces of information that TDHCA is allowed to request on the form. Staff has revised the Notices of Sale Foreclosure Form

and Completed Sale Foreclosure Form to include a yes or no question as to whether the property is residential. This change applied to §1.24(c)(1)(A) and (2)(A) in which "a statement that the property is residential" has been changed to "a yes or no question as to whether the property is residential."

COMMENT 7. Comments from the county clerks' offices of Hunt, Kerr, Montgomery, Navarro, Rusk, Shelby, and Williamson Counties suggested Senate Bill 1233 does not require county clerks to keep the Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms or mention a summary form. The county clerks should be able to forward the Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms within 30 days directly to TDHCA and TDHCA should summarize the forms. The Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form should be sent by email, fax or mail to TDHCA.

STAFF RESPONSE: Per Senate Bill 1233, which adds §51.0022(e) - (f) to the Texas Property Code, TDHCA was given authority to prescribe by rule the forms used to collect this data. The Senate Bill 1233 uses the word "forms" in the plural and not the singular. The rule and forms go into effect only after adoption by TDHCA's Governing Board. Pursuant to the proposed rule at §1.24(f), county clerks should follow their own retention schedules the keeping of these forms. In an effort for a consistent submission schedule, §1.24(d)(1) has been revised from the proposal to read "On the first business day of the month, the county clerk will submit the appropriate summary form to TDHCA." In an effort to reduce postage cost to the county if sending by mail, labor costs for county if faxing, and scanning costs to the county if emailing, TDHCA has developed the Summary Form for Notices of Sale and the Summary Form for Completed Sales. The summary forms will be available to download, fill out electronically and upload to TDHCA via a Web interface for convenience and time and cost savings. Summary forms will be available on TDHCA's website by December 30, 2011.

COMMENT 8. Comments from the county clerks' offices of Cass and Howard Counties suggest the lien holders or the persons conducting the foreclosures should be allowed to send the Notice of Sale Foreclosure Form and Completed Sale Foreclosure Form directly to TDHCA.

STAFF RESPONSE. Senate Bill 1233 identifies the county clerks as the responsible party for submitting the information to TDHCA. The rule addresses the reporting to TDHCA in §1.24(d) and (g).

COMMENT 9. Comments from the county clerk's office of Brazoria County suggested the information collected by §1.24 was already being collected by title companies, which are paid to do this service.

STAFF RESPONSE. While title companies are paid to do this service, they are not required by Senate Bill 1233 to submit the information to TDHCA, which in turn is required to submit the information to the Texas State Legislature. The rule addresses the reporting to TDHCA in §1.24(d) and (g).

COMMENT 10. Comments from county clerks' offices of Aransas, Navarro, Rusk and Shelby Counties suggested the proposed rule should allow for county clerks to charge a fee for the submission of the forms prescribed in the rule to pay for staff time, postage, materials and copies. If not, the rule is another unfunded mandate.

STAFF RESPONSE. Senate Bill 1233 does not authorize TDHCA to empower counties to charge a fee; in fact, Senate Bill 1233 does not address fees at all. Further queries should be directed to the Office of the Attorney General.

COMMENT 11. Comments from the county clerk's office of Aransas County asked what the consequences were of not complying with §1.24? How is compliance being tracked?

STAFF RESPONSE. Noncompliance is not addressed in the statute, so TDHCA cannot address noncompliance in the rule. TDHCA staff anticipates keeping an internal list of counties that have submitted data.

COMMENT 12. Comments from county clerk's office of Brazoria County asked who is going to notify the persons filing the foreclosure notices and completed sales that the new forms are required per §1.24? Are the county clerks responsible for furnishing the forms to the public?

STAFF RESPONSE. Section 1.24 will be published in the *Texas Register* and TDHCA will have a webpage dedicated to information about Senate Bill 1233 and 10 TAC §1.24. This is an effort to notify the public about the new requirements. The county clerk's office could also post necessary notifications. Because the Notices of Sale Foreclosure Forms and Completed Sale Foreclosure Forms are submitted to the county clerk's office, the county clerk could supply the physical forms. However, the Notices of Sale Foreclosure Forms and Completed Sale Foreclosure Forms will be available for download from TDHCA's website by December 30, 2011 so that filers can prepare the forms in advance of submission if they choose.

COMMENT 13. Comment from the county clerk's office of Montgomery suggested the proposed rule only applies to residential lots (1 to 4 units). What is required for foreclosures on raw or unimproved land?

STAFF RESPONSE. Senate Bill 1233 refers only to residential property. There are no additional forms or data collection required by this legislation for foreclosures on raw or unimproved land.

COMMENT 14. Comment from the county clerk's office of Orange County asked if county clerks can forward the foreclosure data that is posted on their county's website, or do they have to fill out dates and ZIP codes on the forms prescribed by the proposed rule?

STAFF RESPONSE. Per Senate Bill 1233 which adds §51.0022(e) to the Texas Property Code, TDHCA is required to prescribe forms for the residential foreclosure data collection that the county clerks must use.

COMMENT 15. Comment from the county clerk's office of Williamson County suggested they would not violate the law, but they may not follow TDHCA's rule.

STAFF RESPONSE. Per Senate Bill 1233, TDHCA was given the authority to prescribe the forms and rule to follow this legislation. Under Texas law, properly promulgated rules carry the force and effect of statutes.

The Board approved the final order adopting the new section on November 10, 2011.

The new section is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provide the Department the authority to adopt rules governing the administration of the Department and its programs, and under §51.0022 of the

Texas Property Code which requires that the Department promulgate forms for collecting certain data regarding residential foreclosure notices and sales and to report the information to the Legislature.

§1.24. Foreclosure Data Collection.

(a) Purpose. This section satisfies the requirement of amendments to Chapter 51, Texas Property Code, per Senate Bill 1233 of the 82nd Legislative Session. The amendment requires the Texas Department of Housing and Community Affairs (TDHCA) to prescribe forms for the collection of foreclosure data from the county clerks. The information received via these forms will be submitted quarterly to the Texas Legislature after January 1, 2012.

(b) Definitions.

(1) Completed Sale Foreclosure Form--A form submitted to the county clerk when residential real property has been sold through a foreclosure and the substitute trustee's deed, sheriff's deed or other valid conveyance out of foreclosure is filed with the county clerk.

(2) Notice of Sale Foreclosure Form--A form submitted to the county clerk when a notice of sale of residential real property is filed with the county clerk.

(3) Summary Form for Completed Sales--A form submitted by the county clerk with TDHCA that lists the Completion of Sale Foreclosure Forms received during the previous month (approximately thirty (30) days) by the county clerk.

(4) Summary Form for Notices of Sale--A form submitted by the county clerk with TDHCA that lists the Notice of Sale Foreclosure Forms received during the previous month (approximately thirty (30) days) by the county clerk.

(5) Residential property--A residential property is a one-to-four-unit dwelling.

(c) Reporting to County Clerks.

(1) When a person files a notice of sale of residential property under Texas Property Code §51.002(b), that person must also submit to the county clerk a Notice of Sale Foreclosure Form that includes at least the information described in subparagraphs (A) - (D) of this paragraph:

(A) a yes or no question as to whether the property is residential;

(B) a statement that a notice of sale is being filed on this property;

(C) the ZIP code of the residential real property; and

(D) the date of submission of the Notice of Sale Foreclosure Form.

(2) When a person files a substitute trustee's deed, sheriff's deed or other valid conveyance out of foreclosure, that person must also submit to the county clerk a Completed Sale Foreclosure Form that includes at least the information described in subparagraphs (A) - (D) of this paragraph:

(A) a yes or no question as to whether the property is residential;

(B) a statement that the property has been sold as a result of foreclosure;

(C) the ZIP code of the residential real property;

(D) the date of submission of the Completed Sale Foreclosure Form.

(d) Reporting to TDHCA.

(1) On the first business day of the month, the county clerk will submit the appropriate summary form to TDHCA. If a Notice of Sale Foreclosure Form is submitted to the county clerk, the county clerk will submit a Summary Form for Notices of Sale to TDHCA. If a Completed Sale Foreclosure Form is submitted to the county clerk, the county clerk will submit a Summary Form for Complete Sales.

(2) The Summary Form for Notices of Sale and Summary Form for Completed Sales shall include at least the information described in subparagraphs (A) and (B) of this paragraph:

(A) A list of dates on which the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms were submitted to the county clerk during the previous month; and

(B) A list of ZIP codes of the properties that are listed on the Notice of Sale Foreclosure Forms and/or the Completed Sale Foreclosure Forms collected during the previous month.

(3) Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms shall not be sent to TDHCA. Only Summary Forms for Notices of Sale and Summary Forms for Completed Sales will be submitted to TDHCA by county clerks.

(e) Location of forms.

(1) The Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms will be located on TDHCA's website by January 1, 2012. This will be a downloadable form that can be printed. If the county clerk is unable to download the form, he or she may call the Housing Resource Center at TDHCA to request a form be mailed via United States Postal Service (USPS). Persons shall use these foreclosure forms to report only those notices of sale and completed sales submitted to the county clerk on or after January 1, 2012.

(2) The Summary Form for Notices of Sale and Summary Form for Completed Sales will be located on TDHCA's website by January 1, 2012. This will be a Web interface submitted online to TDHCA. As an alternative, a downloadable Summary Form for Notices of Sale and Summary Form that can be printed will also be available. If the county clerk is unable to download the forms, he or she may call the Housing Resource Center at TDHCA to request a form be mailed via USPS. County clerks shall use these summary forms to report only those notices of sale and completed sales submitted to the county clerk on or after January 1, 2012.

(f) Submission of forms by persons filing notice of sale or completed sale to county clerk. Persons filing a notice of sale or completed sale shall also submit the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms, as appropriate, with the county clerk. County clerks should retain these forms and the forms are not to be sent to TDHCA. County clerks should follow their own retention schedules in the keeping of these forms.

(g) Submission of forms by county clerks to TDHCA. The executed Summary Form for Notices of Sale and Summary Form for Completed Sales will be accepted from the county clerks' offices via an online Web interface. A username and password will be required to submit via the Web interface. As an alternative method of submittal, the completed Summary Form for Notices of Sale and Summary Form for Completed Sales may also be downloaded and submitted via email as an attachment or mailed to TDHCA. The email and mail addresses for submission will be provided on the Summary Form for Notices of Sale and Summary Form for Completed Sales.

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 November 18, 2011.

TRD-201105127

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 8, 2011

Proposal publication date: September 30, 2011

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

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SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Subchapter B, §§1.31 - 1.37, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines, without changes to the proposal as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6366) and will not be republished.

This repeal is adopted in order to consolidate and simplify the existing rules for Real Estate Analysis.

Public hearings to receive input on the proposed repeal were held from October 7, 2011 to October 17, 2011 and written comments on the proposed repeal were accepted by mail, email, and facsimile from September 30, 2011 to October 26, 2011. No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on November 10, 2011.

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

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 November 18, 2011.

TRD-201105128

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 8, 2011

Proposal publication date: September 30, 2011

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

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10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter B, §§1.31 - 1.37, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines. Sections 1.31 - 1.33, 1.36, and 1.37 are adopted with change to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6367). Section 1.34 and §1.35 are adopted without changes and will not be republished.

The new sections are adopted in order to remove any redundant or unnecessary references to other federal or state statutes and include recommendations for necessary policy and administrative changes to further enhance and streamline operations.

Public hearings to receive input on the proposed rules were held from October 7, 2011 to October 17, 2011 and written comments were accepted by mail, email, and facsimile from September 30, 2011 to October 26, 2011. Written comments were received from Diana Mclver (1) and Audrey Martin (2). Staff reviewed these comments and provides herein a reasoned response to each comment. Staff recommends clarifying and administrative changes for consistency with other Department rules. Staff also recommends deleting the term "audited" in reference to financial statements throughout the rule, specifically in §1.32(d)(2), (e)(1)(B)(ii)(I), and (g)(3)(C).

REASONED RESPONSE TO PUBLIC COMMENT ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 1, SUBCHAPTER B, §§1.31 - 1.37, UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

§1.31(b). Definitions. (1)

COMMENT: Commenter suggests creating a new definition for "Building Costs" to describe and differentiate the cost of constructing or rehabilitating vertical structures, buildings and amenity structures, from other construction costs of the development. The use of this definition would provide clarity about the treatment of these costs throughout the rules, application forms and underwriting process.

STAFF RESPONSE: Staff agreed that describing and differentiating Building Costs from other costs of a development will provide needed clarity in the rules. The 2011 rules use a non-defined phrase "direct construction cost" to generally describe these costs but staff agrees that the phrase can be misinterpreted and confusing. Staff recommends adding clarifying language to the rules associating the phrase "direct construction cost" with the term "Building Cost" as described in §1.32(e)(4) and using the term throughout the rules. Staff also recommends adding a definition of Building Cost to the definitions section of next year's rules.

§1.32(e)(1)(B)(ii)(II)(-b-)(-1-) - (-2-). Identity of Interest Acquisitions. (2)

COMMENT: Commenter suggested that the Department revert back to language in the 2011 rule with respect to a 10% annual return allowed on the original acquisition cost of a development or development site.

STAFF RESPONSE: The proposed rule restricts the 10% annual return calculation to the original equity investment as opposed

to the original acquisition cost. Using a 10% annual return on the original acquisition cost inflates the allowable acquisition cost used in the underwriting process because it provides a return on any debt the owner may have used to finance the original acquisition. Staff recommended no change based on the comment.

The Board approved the final order adopting the new sections on November 10, 2011.

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

§1.31. General Provisions.

(a) Purpose. The rules in this subchapter apply to the underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and reserve for replacement standards employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA"). This subchapter provides rules for the underwriting review of an affordable housing development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides the underwriting staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and TDHCA Governing Board (the "Board") to help ensure procedural consistency in the determination of Development feasibility (§§2306.081(c), 2306.185 and 2306.6710(d), Texas Government Code). Due to the unique characteristics of each development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) Definitions. Terms used in this subchapter that are also defined in Chapter 50 of this title (relating to the Department's Housing Tax Credit Program 2012 Qualified Allocation Plan, known as the "QAP") have the same meaning as in the QAP. Those terms that are not defined in the QAP or which may have another meaning when used in this subchapter, shall have the meanings set forth in this subsection and §1.1 of this chapter (relating to Definitions and Amenities for Housing Program Activities).

(1) Affordable Housing--Housing that has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.

(2) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(3) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(4) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.

(5) Comparable Unit--A Unit, when compared to the subject Unit, similar in net rentable square footage, number of bedrooms, overall condition, location, age, unit amenities, utility structure, and common amenities.

(6) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(7) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Depart-

ment and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(8) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by debt service required to be paid during the same period.

(9) Development--A residential rental housing development that has no less than 16 units under common ownership which has applied for Department funds.

(10) Effective Gross Income (EGI)--The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(11) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(12) Environmental Site Assessment (ESA)--An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §1.35 of this subchapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(13) First Lien Lender--A lender whose lien has first priority.

(14) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(15) Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(16) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(17) Hard Costs--The sum total of Building Cost, site work costs, off-site costs and contingency.

(18) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §1.33 of this subchapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(19) Market Analyst--Any person who prepares a market study.

(20) Market Rent--The rent for a particular Comparable Unit determined after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions.

(21) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

(22) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(23) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(24) Primary Market (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(9) of this subchapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(25) Pro Forma Rent--For a restricted unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(26) Property Condition Assessment (PCA)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the property. The PCA must be prepared in accordance with §1.36 of this subchapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(27) Qualified Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality Market Analysis. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(28) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in the QAP that may not have been presented to the TDHCA Board for decision;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(29) Reserve Account--An individual account:

(A) Created to fund any necessary repairs for a multi-family rental housing development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(30) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this subchapter.

(31) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(32) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described

in Chapter 60, Subchapter A of this title (relating to Compliance Monitoring), and published on the Department's web site.

(33) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(34) Unstabilized Development--A development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider a development stabilized in the Market Study.

(35) Utility Allowance--The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing, a documented estimate from the utility provider proposed in the Application, or for an existing development an allowance calculated by the Department pursuant to §60.109 of this title (relating to Utility Allowances). Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the subject development and consistent with the building plans provided.

(36) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(c) Appeals. Certain programs contain express appeal options. Where not indicated, §1.7 of this chapter (relating to Staff Appeals Process) and §1.8 of this chapter (relating to Board Appeals Process) include general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution (ADR) methods, as outlined in §1.17 of this chapter.

§1.32. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to §2306.148 and §2306.185(b), Texas Government Code, the Department's Governing Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (IRC), requires the tax credits allocated to a development not to exceed the amount necessary to assure feasibility. The rules of the Texas Government Code and the IRC, resulting in a Credit Underwriting Analysis Report used by the Department's Governing Board in decision making with the goal to assist as many Texans as possible by providing no more financing than necessary based on an independent analysis of development feasibility. The Report considers all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with the time frames provided in the current Qualified Allocation Plan (QAP) or Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program

limit method, if applicable, gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

(1) Program Limit Method. For Applicants requesting a Housing Credit Allocation, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in the QAP. For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.

(2) Gap/DCR Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) Operating Feasibility. The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from Income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may make adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Underwriter will independently calculate the Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §1.33 of this subchapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.

(ii) Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Applica-

tion. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period but prior to publication of the Report, the Underwriter may adjust the Applicant's EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.

(iii) Contract Rents. The Underwriter reviews rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties.

(ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100% project-based rental subsidy developments and other

well documented cases may be underwritten at a combined 5% at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI)--The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5% of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Type of Development, the size of the units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The TDHCA Database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; expense data from the TDHCA Database is available on the TDHCA website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority (PHA) Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

(A) General and Administrative Expense (G&A)--Expense for operational accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of Tenant Services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the property and is most often based upon a percentage of Effective Gross Income as documented in a property management agreement. Typically, 5% of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional Tenant Services payroll.

(D) Repairs and Maintenance Expense. Expense for repairs and maintenance, third-party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.

(E) Utilities Expense. Utilities expense includes all gas and electric energy expenses paid by the development.

(F) Water, Sewer and Trash Expense (WST)--Includes all water, sewer and trash expenses paid by the development.

(G) Insurance Expense. Insurance expense includes any insurance for the buildings, contents, and general liability but not health or workman's compensation insurance.

(H) Property Tax. Real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Property tax exemptions or a "Proposed Payment In Lieu Of Tax" agreement (PILOT) must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves of \$250 per unit for New Construction and Reconstruction developments and \$300 per unit for all other developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the PCA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Expenses. The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Tenant Services. Cost to the development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant Services expenses are considered in calculating the Debt Coverage Ratio.

(ii) Security Expense. Contract or direct payroll expense for policing the premises of the Development.

(iii) Compliance Fees. Compliance fees include only compliance fees charged by the Department and are considered in calculating the Debt Coverage Ratio.

(iv) Cable Television Expense. Cable Television Expense includes fees charged directly to the owner of the Development to provide cable services to all units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's independent calculation will be used unless the Applicant's

first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income. The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5% of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5% of the Underwriter's estimates.

(4) Debt Coverage Ratio. DCR is calculated by dividing Net Operating Income by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.

(B) Amortization Period. The Department generally requires an amortization of not less than thirty (30) years and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(C) Repayment Period. For purposes of projecting the DCR over a 30-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. The acceptable first year stabilized pro forma DCR for all priority or fore-closable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35. HOPE VI and TRDO-USDA transactions may underwrite to a DCR less than 1.15 or greater than 1.35 based upon documentation of acceptance from the lender.

(i) For developments other than HOPE VI and TRDO-USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reduction of the interest rate or an increase in the amortization period for TDHCA funded loans;

(II) A reclassification of TDHCA funded loans to reflect grants, if permitted by program rules;

(III) A reduction in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reclassification of TDHCA funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for TDHCA funded loans;

(III) An increase in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma.

(A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5% of the Underwriter's estimates.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for expenses.

(C) Adjustments may be made to the Long Term Pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) Total Housing Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's project cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §1.36(a)(5) of this subchapter (relating to Property Condition Assessment Guidelines). If the Applicant's is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) Excess Land Acquisition. In cases where more land is to be acquired than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may

be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a related party lender; and

(I) Is the current owner in whole or in part of the Property; or

(II) Was the owner in whole or in part of the Property during any period within the thirty-six (36) months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide subclauses (I) and (II) of this clause.

(I) The original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §1.34 of this subchapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of TRDO-USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) Acquisition of Buildings for Tax Credit Properties. Building acquisition cost will be included in the underwritten Total Housing Development Cost and/or Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this subchapter. The underwritten Total Housing Development Cost and/or Eligible Basis will include the lowest of the values determined based on clauses (i) - (iii) of this subparagraph.

(i) The Applicant's stated building acquisition cost;

(ii) The building acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost, prorated using the relative land and building values indicated by the applicable appraised value;

(iii) Total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost, less the appraised "as-vacant" land value;

(iv) The Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) Off-Site Costs. Off-Site costs are costs of improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well documented and certified by a Third Party engineer on the required application form. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(3) Site Work Costs. Site work costs exceeding \$9,000 per Unit, exclusive of ineligible demolition costs, must be documented and certified by a Third Party engineer on the required application form. The Underwriter may require such documentation in cases where the site work cost estimates are not consistent with the Underwriter's site evaluation regardless of the per unit threshold. In addition, for Applicants seeking Housing Tax Credits, documentation in keeping with §50.8(7)(C) of this title (relating to Threshold Criteria) will be utilized in calculating Eligible Basis.

(4) Direct Construction Costs. Sometimes referred to as "Building Costs" are those cost of materials and labor required for the vertical construction or rehabilitation of buildings and amenity structures.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published third-party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published

third-party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and types of development not included in the Average Quality standard.

(B) Rehabilitation and Adaptive Reuse. The Underwriter will use cost data provided by the Property Condition Assessment (PCA). In the case where the Applicant has provided a PCA which is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If said supplement is not provided or the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

(5) Contingency. All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be limited to a maximum of 7% of Building Cost plus site work and off-sites for New Construction and Reconstruction developments and 10% of Building Cost plus site work and off-sites for Rehabilitation and Adaptive Reuse developments. For Housing Tax Credit developments, the percentage is applied to the sum of the eligible Building Cost, eligible site work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7% or 10% limit, as applicable.

(6) Contractor Fee. Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to: on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities and other indirect costs (consistent with costs outlined in Division 1 of the Construction Specifications Institute's MasterFormat system). Contractor fees are limited to a total of 14% on developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on developments with Hard Costs at \$2 million or less. For tax credit developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For developments also receiving financing from TRDO-USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TRDO-USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee. Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs (15% for developments with 50 or more units, or 20% for developments with 49 or fewer units) but will not be included in Eligible Basis. All fees to Affiliates and/or Related Parties for work determined by the Underwriter to be typically completed by the developer will be considered part of developer fee.

(A) For Housing Tax Credit developments, the development cost associated with developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15% of the project's eligible costs less developer fees for developments proposing 50 units or more and 20% of the project's eligible costs less developer fees for developments proposing 49 units or less, as defined in the QAP.

(B) In the case of a transaction requesting acquisition Tax Credits:

(i) the allocation of eligible developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15% of the Rehabilitation/New Construction eligible costs less developer fees for developments proposing 50 units or more and 20% of the Rehabilitation/New Construction eligible costs less developer fees for developments proposing 49 units or less; and

(ii) no developer fee attributable to an identity of interest acquisition of the Development will be included.

(C) For non-Housing Tax Credit developments, the percentage can be up to 15% but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related-Party construction loans are not included in Eligible Basis.

(9) Reserves. The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses less management fees and reserve for replacements plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is well documented in the first lien lender or syndicator term sheet(s).

(10) Other Soft Costs. For Housing Tax Credit developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing:

(A) Personal credit reports for development sponsors, developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in the QAP;

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) Adherence to obligations on existing or prior TD-HCA funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be designed to comply with the QAP, as proposed.

(2) The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(3) Supportive Housing. The unique development and operating characteristics of Supportive Housing developments may require special consideration in the following areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) Operating Expenses. A Supportive Housing development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical Affordable Housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing developments provided by the Applicant or otherwise available to the Underwriter;

(C) DCR and Long Term Feasibility. Supportive Housing developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of the following: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof

of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Total Housing Development Costs. For Supportive Housing designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. An infeasible Development will not be recommended for a Grant, loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate. The method for determining the Gross Capture Rate for a Development is defined in §1.33(d)(11)(F) of this subchapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may at their discretion use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

(A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10% for the total proposed units; or

(B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10% for the total proposed units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30%; or

(D) targets Persons with Disabilities and the Gross Capture Rate exceeds 30%.

(E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of Affordable Housing which replaces previously existing Affordable Housing within the Primary Market Area as defined in §1.33 of this subchapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing Affordable Housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing Affordable Housing which is at least 50%

occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated deferred developer fee, based on the Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Pro Forma Rent. The Pro Forma Rent for units with rents restricted at 60% of AMGI is less than the Net Program Rent for units with rents restricted at or below 50% of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.

(4) Initial Feasibility. The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for rural developments 36 units or less and 65% for all other developments.

(5) Long Term Feasibility. Any year in the first fifteen (15) years of the Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects:

(A) negative Cash Flow; or

(B) a Debt Coverage Ratio below 1.15.

(6) Exceptions. The infeasibility conclusions may be excepted where either of the following apply.

(A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments meeting the requirements of one of more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.

(i) The Development will receive Project-based Section 8 Rental Assistance for at least 50% of the units and a firm commitment with terms including Contract Rent and number of units is submitted at application.

(ii) The Development will receive rental assistance for at least 50% of the units in association with TRDO-USDA financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50% of the units.

(iv) The Development will be characterized as Supportive Housing for at least 50% of the units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50% of the units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§1.33. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must

include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.

(A) Documentation of good standing from the Texas Comptroller of Public Accounts.

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and time frames in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the application round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the application round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) **Table of Contents.** Number the exhibits included with the report for easy reference.

(4) **Summary Sheet.** Include the Department's Market Analysis Summary exhibit.

(5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.

(8) **Secondary Market Area.** All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in this paragraph, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the secondary market area. (§2306.67055)

(A) The Secondary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.

(B) The Market Analyst's definition of the Secondary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA boundaries as well as the location of the subject Development and all comparable Developments.

(9) Primary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The Primary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 100,000 people;

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.

(B) The Market Analyst's definition of the Primary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;

(ii) a complete demographic report for the defined PMA; and

(iii) a scaled distance map indicating the PMA boundaries as well as the location of the subject Development and all comparable Developments.

(C) Comparable Units. Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:

(i) Development name;

(ii) Address;

(iii) Year of construction and year of Rehabilitation, if applicable;

(iv) Property condition;

(v) Population target;

(vi) Unit mix specifying number of Bedrooms, number of baths, net rentable square footage; and

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) Description of concessions;

(viii) List of unit amenities;

(ix) Utility structure;

(x) List of common amenities; and

(xi) For rental developments only;

(I) occupancy; and

(II) turnover.

(10) Market Information:

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) rental developments (all multi-family);

(iii) Affordable Housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development (§1.32(d)(1)(C) of this subchapter relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Targeted Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five (5) year period with the year of application as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts or ZIP codes on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the following they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of application as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly or special needs population targeted by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35% for the general population and 50% for Qualified Elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(II) For Developments targeting the general population:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) The tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all units having three (3) or more bedrooms:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Developments targeting the senior population:

(-a-) Minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) Demand from Secondary Market Area:

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25% of Gross Demand; and

(III) The supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) Demand from Other Sources:

(I) The source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) Consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) If households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) Documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) A complete demographic report for the area in which the vouchers are distributed.

(11) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §1.32(i) of this subchapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed unit type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Total adjustments in excess of 15% must be supported with additional narrative.

(v) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) State the Gross Demand for each Unit type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom units restricted at 50% of AMFI; two-Bedroom units restricted at 60% of AMFI); and

(ii) State the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one unit due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) The proposed subject Units;

(ii) Comparable Units with priority over the subject that have made application to TDHCA and have not been presented to the TDHCA Board for decision;

(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §1.32(i) of this subchapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis

considering the combined PMA's and all proposed and unstabilized units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§1.36. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the regulatory period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least fifteen (15) years. The PCA must also include discussion and analysis of the following:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) Code Compliance. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property;

(3) Program Rules. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;

(4) Statement of Acknowledgement. The PCA provider must affirm in the report that the Applicant's scope of work for improvements and the immediate needs of the Rehabilitation are considered and reconciled within the PCA report and the PCA Cost Schedule Supplement; and

(5) Cost Estimates for Repair and Replacement. It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) TRDO-USDA guidelines for Capital Needs Assessment; or
- (5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards

are widely used, and if all other criteria and requirements described in this section are satisfied.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA should be signed and dated by the report provider not more than six (6) months prior to the date of the Application.

§1.37. Reserve for Replacement Rules and Guidelines.

(a) General Provisions. The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with §2306.186 of the Texas Government Code. The reserve must be established for each unit in a Development of 25 or more rental units, regardless of the amount of rent charged for the unit. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) The First Lien Lender shall maintain the Reserve Account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and §2306.186 of the Texas Government Code.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond indenture or tax credit syndication, the Department shall:

(A) Be a required signatory party in all escrow agreements for the maintenance of reserve funds;

(B) Be given notice of any asset management findings or reports, transfer of money in Reserve Accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within thirty (30) days of any receipt or determination thereof; and

(C) Subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified from time to time, to include subsection (c) of this section.

(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under §2306.186 of the Texas Government Code and as described in this section.

(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond indenture or tax credit syndication or where there is no First Lien Lender but the allocation of funds by the Department and §2306.186 of the Texas Government Code requires that the Department oversee a Reserve Account, the Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow

agent at a cost plus fee payable by the Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(c) If the Department is not the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) Reserve for replacement requirements under the first lien loan agreement;

(2) Monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and

(3) A statement by the First Lien Lender:

(A) That the Development Owner has met all established reserve for replacement requirements; or

(B) Of the plan of action to bring the Development in compliance with all established reserve for replacement requirements, if necessary.

(d) If the Development meets the minimum unit size described in subsection (a) of this section and the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section.

(e) If the Department is the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section.

(1) For new construction Developments:

(A) Not less than \$150 per unit per year for units one (1) to five (5) years old; and

(B) Not less than \$200 per unit per year for units six (6) or more years old.

(2) For Rehabilitation and Reconstruction Developments:

(A) An amount per unit per year established by the Department's division responsible for credit underwriting based on the information presented in a Property Condition Assessment in conformance with §1.36 of this subchapter (relating to Property Condition Assessment Guidelines); and

(B) Not less than \$300 per unit per year.

(3) For either new construction, Rehabilitation or Reconstruction Developments, the Development Owner of a multifamily rental housing Development shall contract for a third-party Property Condition Assessment meeting the requirements of §1.36 of this subchapter and the Department will reanalyze the annual reserve requirement based on the findings and other support documentation.

(A) A Property Condition Assessment will be conducted:

(i) At appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(ii) At least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a third-party Property Condition Assessment.

(B) Submission by the Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include:

(i) The complete Property Condition Assessment;

(ii) First Lien Lender and/or Owner response to the findings of the Property Condition Assessment;

(iii) Documentation of repairs made as a result of the Property Condition Assessment; and

(iv) Documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment.

(f) A Land Use Restriction Agreement or restrictive covenant between the Owner and the Department must require:

(1) The Owner to begin making annual deposits to the Reserve Account on the later of:

(A) The date that occupancy of the Development stabilizes as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date the property is at least 90% occupied; or

(B) The date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded.

(2) The Owner to continue making deposits until the earliest of the following dates:

(A) The date on which the Owner suffers a total casualty loss with respect to the Development;

(B) The date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(C) The date on which the Development is demolished;

(D) The date on which the Development ceases to be used as a multifamily rental property; or

(E) The later of:

(i) The end of the affordability period specified by the Land Use Restriction Agreement or restrictive covenant; or

(ii) The end of the repayment period of the first lien loan.

(g) The duties of the Owner of a multifamily rental housing Development under this section cease on the date of a change in ownership of the Development; however, the subsequent Owner of the Development is subject to the requirements of this section.

(h) If the Department is the First Lien Lender with respect to the Development or the First Lien Lender does not require establishment of a Reserve Account, the Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet:

(1) Financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;

(2) Identification of costs other than capital improvements funded by the replacement Reserve Account; and

(3) Signed statement of cause for:

(A) Use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;

(B) Deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c), (d) and (e) of this section; and

(C) Failure to make a required deposit.

(i) If a request for extension or waiver is not approved by the Department, Department action, including a penalty of up to \$200 per dwelling unit in the Development and/or characterization of the Development as Materially Non-Compliant, as defined in §60.102 of this title (relating to Definitions), may be taken when:

(1) A Reserve Account, as described in this section, has not been established for the Development;

(2) The Department is not a party to the escrow agreement for the Reserve Account;

(3) Money in the Reserve Account:

(A) Is used for expenses other than necessary repairs, including property taxes or insurance; or

(B) Falls below mandatory deposit levels;

(4) Owner fails to make a required deposit;

(5) Owner fails to contract for the third party Property Condition Assessment as required under subsection (e)(3) of this section; or

(6) Owner fails to make necessary repairs, as defined in subsection (k) of this section.

(j) On a case by case basis, the Department may determine that the money in the Reserve Account may:

(1) Be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and

(B) The funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Owner or developer fee is available;

(2) Fall below mandatory deposit levels without resulting in Department action, if:

(A) Development income after payment of operating expenses, but before payment of return to Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and

(B) Subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(k) The Department or its agent may make repairs to the Development if the Owner fails to complete necessary repairs indicated

in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Owner's failure to comply with federal, state and/or local health, safety, or building code.

(1) Payment for necessary repairs must be made directly by the Owner or through a replacement Reserve Account established for the Development under this section.

(2) The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs.

(l) This section does not apply to a Development for which the Owner is required to maintain a Reserve Account under any other provision of federal or state law.

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 November 18, 2011.

TRD-201105129

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 8, 2011

Proposal publication date: September 30, 2011

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



CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter H, §5.801, concerning the Project Access Initiative. Section 5.801 is adopted with changes to the proposed text as published in the August 12, 2011, issue of the *Texas Register* (36 TexReg 5063). The amended section is adopted with changes to ensure that Department of State Health Services (DSHS) pilot participants would not be required to participate in services to receive a Project Access voucher.

The adopted amendments are based on feedback from the Disability Advisory Workgroup and would expand the Project Access program to reserve up to 10 percent of the vouchers for a pilot program for persons exiting state psychiatric health hospitals. This "State Hospital Pilot" program would be a partnership with DSHS who would provide supportive services to ensure a successful transition into the community.

The Department accepted comments on the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rule.

Public comments were accepted from August 12, 2011 through September 12, 2011, with comments received from (1) Belinda Carlton, Texas Council for Developmental Disabilities, and (2) Gyl Switzer, Mental Health America of Texas, both participants

of the Disability Advisory Workgroup. Both individuals made the same comment to suggest that the Department change the rule so that the DSHS pilot participants would not be required to participate in services to receive a Project Access voucher. Both the Department and DSHS staff reviewed the comments and agreed with the proposed change.

REASONED RESPONSE TO PUBLIC COMMENT ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 5, SUBCHAPTER H, §5.801, CONCERNING THE PROJECT ACCESS INITIATIVE

§5.801(d) and (e)

COMMENT: Commenters (1) and (2) stated during discussion at the Disability Advisory Workgroup that there is some concern that the participants in the DSHS pilot could be required to participate involuntarily in services to receive a voucher. They requested the language be changed to allow a resident of a state psychiatric hospital that is eligible to transition to the community, but does not want to participate in the pilot services, be eligible to receive a Project Access voucher.

STAFF RESPONSE: The Department staff consulted with DSHS staff regarding this suggestion and both agencies agreed with the change and recommend amending subsections (d)(3) and (e)(3). Subsection (d)(3) is amended by changing the language from "participants of" to "individuals eligible for" and subsection (e)(3) is amended by changing the language from "a participant in" to "eligible for."

The Board approved the final order adopting the amended section on November 10, 2011.

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

§5.801. *Project Access Initiative.*

(a) Purpose. Project Access is a program that utilizes federal Section 8 Housing Choice Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

(b) Definitions.

(1) Section 8--The United States Department of Housing and Urban Development Section 8 Housing Choice Voucher Program administered by the Department.

(2) At-Risk Applicant--Applicant that meets the criteria in subparagraphs (A) and (B) of this paragraph:

(A) current recipient of Tenant-Based Rental Assistance from the Department's HOME Investments Partnership Program; and

(B) within one-hundred-twenty (120) days prior to expiration of assistance.

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Program Design.

(1) At least 70 percent of Project Access Vouchers will be reserved for persons under the age of sixty-two (62) at the time of voucher issuance that meet the eligibility criteria of subsection (e)(1) and (2) of this section.

(2) No more than 20 percent of Project Access Vouchers will be reserved for persons at or over the age of sixty-two (62) at the time of voucher issuance, meeting the Project Access eligibility criteria in subsection (e)(1) and (2) of this section.

(3) No more than 10 percent of Project Access Vouchers will be reserved for individuals eligible for a pilot program in partnership with the Department of State Health Services (DSHS) and the Department for current residents of Texas state psychiatric hospitals that meet the criteria of subsection (e)(1) and (3) of this section at the time of voucher issuance.

(4) The total number of Project Access Vouchers will be determined each year in the Departmental Annual Public Housing Agency (PHA) Plan. The number of vouchers allocated to each sub-population listed in paragraphs (1) - (3) of this subsection will be determined by the Department.

(e) Project Access Eligibility Criteria. A Project Access voucher recipient must meet all Section 8 eligibility criteria as well as meet all of the eligibility criteria in paragraph (1) of this subsection and either paragraph (2) or (3) of this subsection:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental, or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently;

(2) meet one of the criteria in subparagraphs (A) and (B) of this paragraph:

(A) be an At-Risk Applicant and a previous resident of a nursing facility, intermediate care facility, or board and care facility as defined by the U.S. Department of Housing and Urban Development (HUD); or

(B) be a current resident of a nursing facility, intermediate care facility, or board and care facility at the time of voucher issuance as defined by HUD;

(3) be eligible for the DSHS pilot program for residents of Texas state psychiatric hospitals at the time of voucher issuance.

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 November 18, 2011.

TRD-201105126

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 8, 2011

Proposal publication date: August 12, 2011

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

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission adopts an amendment to 16 TAC §301.1, Definitions, relating to the words and terms used in the Commission's rules. The rule amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6839) and will not be republished.

The amendment is adopted to implement House Bill 2271, 82nd Legislature, Regular Session, by adopting the statutory definitions of active and inactive racetrack licenses and by specifying the number of races in a greyhound performance.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 November 18, 2011.

TRD-201105131

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: December 8, 2011

Proposal publication date: October 14, 2011

For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §309.8

The Texas Racing Commission adopts the repeal of 16 TAC §309.8, Racetrack License Fees. The Commission adopts the repeal in conjunction with the simultaneous adoption of new 16 TAC §309.8, which is published elsewhere in this issue of the *Texas Register*. The repeal was proposed through publication in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6840) and is adopted without change to the proposal as published. The section will not be republished.

The adopted changes are the result of changes in the Texas Racing Act under House Bill 2271, 82nd Legislature, Regular Session. HB 2271 eliminated outstanding pari-mutuel tickets and vouchers as a source of revenue to the Commission and authorizes the Commission to adjust fees under Texas Racing Act §5.01 to recover that lost revenue. Through this repeal and adoption of a new §309.8, the Commission will eliminate all simulcasting fees and most live racing fees. Instead, agency operations will be funded by annual fees paid by each licensed racetrack.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound rac-

ing, and §5.01, which authorizes the Commission to set fees to cover the costs of regulating, overseeing, and licensing live and simulcast racing at racetracks.

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 November 18, 2011.

TRD-201105132

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: January 1, 2012

Proposal publication date: October 14, 2011

For further information, please call: (512) 833-6699



16 TAC §309.8

The Texas Racing Commission adopts new 16 TAC §309.8, Racetrack License Fees, concerning the fees paid by the racetracks to pay for the administration and enforcement of the Texas Racing Act. The new rule is adopted in conjunction with the simultaneous repeal of existing 16 TAC §309.8, which is published elsewhere in this issue of the *Texas Register*. The new rule is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6840) and will not be republished.

The adopted rule is the result of changes in the Texas Racing Act under House Bill 2271, 82nd Legislature, Regular Session. HB 2271 eliminates outstanding pari-mutuel tickets and vouchers as a source of revenue to the Commission and authorizes the Commission to adjust fees under Texas Racing Act §5.01 to recover that lost revenue. Through the repeal and adoption of a new §309.8, the Commission will eliminate all simulcasting fees and most live racing fees. Instead, agency operations will be funded by annual fees paid by each licensed racetrack.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §5.01, which authorizes the Commission to set fees to cover the costs of regulating, overseeing, and licensing live and simulcast racing at racetracks.

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 November 18, 2011.

TRD-201105133

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: January 1, 2012

For further information, please call: (512) 833-6699



SUBCHAPTER B. OPERATIONS OF
RACETRACKS
DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.129

The Texas Racing Commission adopts an amendment to 16 TAC §309.129, Automatic Banking Machines, concerning the use of automatic banking machines on the grounds of a racetrack. The amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6841) and will not be republished.

The amendment is adopted to implement House Bill 2271, 82nd Legislature, Regular Session, which in part eliminates the \$200 daily cap on the withdrawals that a customer may make from each account.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 November 18, 2011.

TRD-201105134
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 8, 2011
Proposal publication date: October 14, 2011
For further information, please call: (512) 833-6699



CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.3

The Texas Racing Commission adopts an amendment to 16 TAC §311.3, Information for Background Investigation, concerning the requirement to submit fingerprints for a criminal history check in order to apply for an occupational license. The amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6842) and will not be republished.

The amendment is adopted to implement House Bill 2271, 82nd Legislature, Regular Session, which in part requires the Commission to review fingerprints for both new and renewed licenses. The amendment also increases the fingerprinting fee from \$12.00 to \$44.20 in order to fully reimburse the Texas Department of Public Safety for its costs in conducting the background checks.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §7.05, which authorizes the Commission to recover the costs of criminal history checks.

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 November 18, 2011.

TRD-201105135
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 8, 2011
Proposal publication date: October 14, 2011
For further information, please call: (512) 833-6699



CHAPTER 319. VETERINARY PRACTICES
AND DRUG TESTING
SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.3

The Texas Racing Commission adopts an amendment to 16 TAC §319.3, Medication Restricted, concerning the prohibition of most drugs, chemicals, and other substances in a horse or greyhound while participating in racing. The rule amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6842) and will not be republished.

The adopted change reduces the maximum permissible plasma or serum concentration of phenylbutazone in horses from 5.0 micrograms per milliliter to 2.0 micrograms per milliliter. This change is being made in accordance with recent changes to the model rules adopted by the Association of Racing Commissioners International (ARCI).

The Commission received one comment in response to publication of the proposal. The comment was from ARCI, which expressed support for the change.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §3.16, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

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 November 18, 2011.

TRD-201105139

Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 8, 2011
Proposal publication date: October 14, 2011
For further information, please call: (512) 833-6699



SUBCHAPTER D. DRUG TESTING DIVISION 2. TESTING PROCEDURES

16 TAC §319.335, §319.336

The Texas Racing Commission adopts amendments to 16 TAC §319.335 and §319.336. These rules relate to the approval and payment of drug testing costs by the racetrack associations. The amendments are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6843) and will not be republished.

The adopted changes implement House Bill 2271, 82nd Legislature, Regular Session, which in part eliminates outstanding pari-mutuel tickets and vouchers as a source of revenue to the Commission. The current rules allow the associations to pay drug testing costs out of the outstanding tickets and vouchers and require the associations to pay any remaining amounts to the Commission. The adopted changes eliminate the Commission's auditing of drug testing charges and allow the associations to retain any remaining amounts.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §5.01, which authorizes the Commission to set fees to cover the costs of regulating, overseeing, and licensing racing.

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 November 18, 2011.

TRD-201105136
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 8, 2011
Proposal publication date: October 14, 2011
For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER A. MUTUEL OPERATIONS DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.36

The Texas Racing Commission adopts an amendment to 16 TAC §321.36, Unclaimed Outs and Vouchers, concerning funds held by racetrack associations for the payment of outstanding pari-mutuel tickets and vouchers. The rule amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6844) and will not be republished.

The adopted changes implement House Bill 2271, 82nd Legislature, Regular Session, which in part eliminates outstanding tickets and vouchers as a source of revenue to the Commission. The current rule requires the associations to pay any retained funds from expired tickets and vouchers to the Commission on a quarterly basis. The adopted amendment eliminates the requirement to pay the amounts to the Commission, and instead specifies that racetracks may retain these amounts.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 November 18, 2011.

TRD-201105137
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 8, 2011
Proposal publication date: October 14, 2011
For further information, please call: (512) 833-6699



SUBCHAPTER D. SIMULCAST WAGERING DIVISION 1. GENERAL PROVISIONS

16 TAC §321.407

The Texas Racing Commission adopts an amendment to 16 TAC §321.407, Approval of Wagering on Simulcast Import Races, concerning the Commission's review and approval of racetrack requests to import and wager on simulcast races. The amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6845) and will not be republished.

The adopted amendment defines a simulcast import race to include a race of Thoroughbreds, Quarter Horses, Arabians, Paint Horses, Appaloosas, Standardbreds, or a mixture of these breeds. The Commission's current policy restricts a Texas racetrack from importing Standardbred (harness) races for simulcast wagering unless a meet-for-meet reciprocal agreement exists between the Standardbred racetrack and the Texas racetrack. This amendment mirrors the policy in place for all other imported horse or greyhound races by eliminating the reciprocal meet-for-meet arrangement for Standardbred racing.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.011, which authorizes the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

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 November 18, 2011.

TRD-201105140

Mark Fenner

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Texas Racing Commission

Effective date: December 8, 2011

Proposal publication date: October 14, 2011

For further information, please call: (512) 833-6699



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER C. TEXAS CERTIFICATE OF HIGH SCHOOL EQUIVALENCY

The State Board of Education (SBOE) adopts amendments to §§89.41-89.47 and new §89.48 and the repeal of §89.48, concerning the Texas certificate of high school equivalency. The amendments, new section, and repeal are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6848) and will not be republished. The sections amended provided for administration of the General Educational Development (GED) test in accordance with requirements set forth by the American Council on Education. The adopted rule actions incorporate changes resulting from Senate Bill (SB) 1094, 82nd Texas Legislature, 2011, and recent board discussion.

In addition to providing for administration of the GED test in accordance with requirements set forth by the American Council on Education, the rules in 19 TAC Chapter 89, Subchapter C, provide for the establishment of testing centers and address applicant eligibility, retesting, examinees with disabilities, and standard fees for the issuance of GED certificates and scores.

The Texas Education Code (TEC), §7.111, was amended by SB 1094, 82nd Texas Legislature, 2011, relating to the availability of online testing for high school equivalency examinations. SB 1094 directed the SBOE to develop a rule and deliver the examinations and provide for the administration of the examinations online. Accordingly, the option to obtain examination certificates online will necessitate an additional fee.

Additionally, during the April 2011 meeting, the SBOE Committee of the Full Board was provided with a status report on the high school equivalency program and examinations. Given the SBOE's authority under the TEC, §7.111, to provide for the ad-

ministration of a high school equivalency examination, the board discussed the development of a high school equivalency examination aligned with Texas curriculum standards.

In response to recent legislation and SBOE discussion, the adopted rule actions clarify and update the current rules as follows.

Section 89.41, Policy, was amended to remove references to the GED and the American Council on Education.

Section 89.42, Official Testing Centers, was amended to remove references to the GED and the American Council on Education and to change the educational requirements for chief examiners from a master's degree to a bachelor's degree. The adopted amendment also provides clarification about the amount of the fee to cover the costs for test administration.

Section 89.43, Eligibility for a Texas Certificate of High School Equivalency, was amended to remove references to the GED and the American Council on Education and correct a reference to ChalleNGe Corps.

Section 89.44, Identification, incorporates minor technical edits.

Section 89.45, Retesting, was amended to remove the requirement to wait six months or present a letter from an adult preparation program or a certified teacher verifying that the individual is prepared to retest.

Section 89.46, Examinees with Disabilities, was amended to remove references to the GED and the ability of examiners to test individuals at home. In addition, language relating to people with disabilities was modified to reflect person first respectful language as required by House Bill 1481, 82nd Texas Legislature, 2011.

Section 89.47, Issuance of the Certificate, was amended to remove references to the GED and establish in rule a convenience fee of no more than \$2.00 to print all certificates online.

New §89.48, Online Testing, was added to provide for development and administration of online examinations for persons 18 years of age and older. The adopted new rule also provides for verification of student identity and establishes in rule a \$200 fee to cover costs of administering the examinations online and a convenience fee of no more than \$2.00 to print certificates online.

Current §89.48, State Administrator, was repealed as the designation of a state administrator is not required to be specified in rule.

In addition, the subchapter title was changed from "General Educational Development" to "Texas Certificate of High School Equivalency."

The SBOE took action to approve the rule actions for second reading and final adoption during its November 2011 meeting.

The adopted rule actions have procedural and reporting implications. If an eligible entity wishes to establish a new testing center, the entity must submit an official request to the commissioner of education for authorization to do so. The request to open a new center is initiated by the eligible district, institution of higher education, or education service center. It is a requirement of the high school equivalency program that an eligible entity follow the process established by the Texas Education Agency (TEA) to request authorization to open a new testing center. This includes submitting a standard request form outlining staffing, location, fees, and need. In addition, individuals will be able to access

and print certificates and copies of test scores online. Eligible examinees will also be able to take the high school equivalency examination online.

The adopted rule actions have no new locally maintained paper-work 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, new section, and repeal 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 implement the latest policy in a timely manner. The effective date for the amendments, new section, and repeal is 20 days after filing as adopted.

No public comments were received on the proposal.

19 TAC §§89.41 - 89.48

The amendments and new section are adopted under the Texas Education Code, §7.111, which authorizes the SBOE to provide for the administration of high school equivalency examinations and to establish a rule and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The statute further states that the fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores. In addition, the Texas Education Code, §7.111, as amended by Senate Bill 1094, 82nd Texas Legislature, 2011, authorizes the SBOE to develop a rule and deliver high school equivalency examinations and provide for the administrations of the examinations online.

The amendments and new section implement the Texas Education Code, §7.111.

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 November 21, 2011.

TRD-201105160

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: December 11, 2011

Proposal publication date: October 14, 2011

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



19 TAC §89.48

The repeal is adopted under the Texas Education Code, §7.111, which authorizes the State Board of Education (SBOE) to provide for the administration of high school equivalency examinations and to establish a rule and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The statute further states that the fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores. In addition, Texas Education Code, §7.111, as amended

by Senate Bill 1094, 82nd Texas Legislature, 2011, authorizes the SBOE to develop a rule and deliver high school equivalency examinations and provide for the administrations of the examinations online.

The repeal implements the Texas Education Code, §7.111.

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 November 21, 2011.

TRD-201105161

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: December 11, 2011

Proposal publication date: October 14, 2011

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



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER A. ACCOUNTABILITY

19 TAC §§97.1 - 97.4

The State Board of Education (SBOE) adopts the repeal of §§97.1-97.4, concerning accountability. The repeals are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6852) and will not be republished. The sections address accountability, define accountability ratings, present criteria for accountability, and address sanctions authorized under federal law. The adopted repeals were necessary to reflect statutory changes resulting from House Bill (HB) 3, 81st Texas Legislature, 2009, which transferred authority to adopt student achievement indicators from the SBOE to the commissioner of education.

In June 2009, the 81st Texas Legislature enacted HB 3, which made significant changes to the Texas public school accountability system, including requiring the commissioner of education to adopt a set of indicators of the quality of learning on a campus and to review the indicators for consideration of appropriate revisions. This change in statute requires the repeal of SBOE rules in 19 TAC Chapter 97, Subchapter A.

The SBOE took action to approve the repeals for second reading and final adoption during its November 2011 meeting.

The adopted repeals have no procedural and reporting implications. The adopted repeals have no locally maintained paper-work requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved the repeals 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. The earlier effective date will immediately re-

peal rules to reflect the transfer of authority. The effective date for the repeals is 20 days after filing as adopted.

No public comments were received on the proposal.

The repeals are adopted under the Texas Education Code, §§39.051-39.054, as amended and added by House Bill 3, 81st Texas Legislature, 2009, which authorize the commissioner of education to determine the criteria for accreditation statuses, to adopt indicators of quality of learning and student achievement, and to adopt rules to evaluate school district and campus performance.

The repeals implement the Texas Education Code, §§39.051-39.054, as amended and added by House Bill 3, 81st Texas Legislature, 2009.

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 November 21, 2011.

TRD-201105162

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: December 11, 2011

Proposal publication date: October 14, 2011

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



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.15

The Texas Board of Professional Engineers (Board) adopts an amendment to §131.15, regarding Committees, without changes to the proposed text as published in September 9, 2011, issue of the *Texas Register* (36 TexReg 5785) and will not be republished.

The rule change removed the Joint Advisory Committee with the Texas Board of Architectural Examiners pursuant to the changes made to the Texas Engineering Practice Act by House Bill 2284 in the 82nd Legislative Session.

The Board received no comments on the proposed amendment.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 November 21, 2011.

TRD-201105153

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: December 11, 2011

Proposal publication date: September 9, 2011

For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.19

The Texas Board of Professional Engineers (Board) adopts new §137.19, regarding Engineers Qualified to be Texas Windstorm Inspectors, without changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5785) and will not be republished.

The adopted new rule implements changes made to the Texas Engineering Practice Act by House Bill 3 (HB 3) in the 82nd Special Legislative Session, which requires the Board to establish a roster of professional engineers who are qualified to perform engineering services related to design of structures in windstorm areas. Only professional engineers on this roster will be allowed to request appointment by the Texas Department of Insurance as Qualified Windstorm Inspectors.

The Board received comments and questions from 18 individuals and groups regarding the new proposed rule. The Board responded to questions regarding the proposed procedures individually and will be disseminating information to the affected public through outreach meetings and web-based materials. The materials will include answers to general questions received.

The Board received several comments regarding the purpose and intent of the rule stating general opposition to the rule. The Board addresses these comments by noting that the adoption of this rule is the required implementation of HB 3 of the 82nd Special Legislative Session. Several comments stated that this change to the Act and Rules establishes an additional certification for engineers practicing structural design in high-wind areas. The Board addresses those comments by pointing out that the purpose of this roster is to allow engineers to voluntarily provide evidence of competence. Being on the new roster is not a requirement to perform engineering work, but it is a requirement to apply to the Texas Department of Insurance as a Windstorm Inspector. There were no changes made to the rule, as proposed, in response to these comments.

One commenter challenges the rule proposal stating that it, as written, will allow only a few exceptionally gifted engineers to qualify. The commenter goes on to say that the reduction in the number of appointed inspectors will mean that buildings will not be able to get the appropriate insurance, which will have an ad-

verse affect on the economies of the coastal communities. The Board addresses these comments by pointing out that it is not the intent of this rule to increase requirements on practicing engineers. The rule establishes a procedure by which a practicing, competent engineer can provide evidence of competence in order to be eligible for appointment by the Texas Department of Insurance as a Texas Windstorm Inspector as contemplated by the Texas Legislature. It is not aimed at establishing exceptional competence or eliminating competent engineers. There were no changes made to the rule, as proposed, in response to these comments.

Several comments and questions received related to how the Texas Department of Insurance and its staff will handle the modified processes. One commenter suggested a substantial change to the proposed rule which would add more rigorous requirements related to the performance of inspections, more extensive competence requirements for applicants, as well as annual renewal and continuing education requirements to remain on the roster. Another commenter suggested that the Board create a "structural committee" to develop guidelines for inspections. Another commenter suggested that the Board should specify the technical nature and scope of windstorm inspections. The Board disagrees with the commenter's proposals and addresses those comments by noting that the creation of this roster and the enforcement of the Engineering Practice Act and Rules is under the jurisdiction of the Texas Board of Professional Engineers, but the Windstorm Inspector program continues to be under the jurisdiction of the Texas Department of Insurance. This rule proposal is a direct implementation of HB 3, which requires the Board to develop the roster of Engineers Qualified to be Texas Windstorm Inspectors, but did not provide for a renewal or additional requirements such as continuing education. The Texas Department of Insurance will be developing revisions to the Windstorm Inspector Program in response to HB 3. All comments addressing the Windstorm Inspector Program have been shared with Texas Department of Insurance staff. There were no changes made to the rule, as proposed, in response to these comments.

While neither for or against the proposed rule, one commenter observed that certain municipalities will not allow engineering of certain buildings unless the engineer is also an appointed Windstorm Inspector. The Board addresses this comment noting that it is outside the scope of the Texas Engineering Practice Act and the proposed rule. There were no changes made to the rule, as proposed, in response to this comment.

Several comments were received regarding the self-administered competence verification. One commenter stated that the passing score on the verification should be reduced to 80% from the proposed 90% to make it "more reasonable." Another commenter was concerned about the security of verification and suggested adding a requirement that the applicant put his or her engineer seal on the answer sheet. The Board addresses these comments by pointing out that the verification is intended to allow an engineer to demonstrate general knowledge of applicable codes. It is not intended to be a "high-stakes" test that will limit the field of applicants. All applicants are expected to pass the verification. Since the information involved should be readily available and all applicants will have to provide identification information to log into an internet based system before completing the verification, additional security measures and a lower passing score are not considered necessary. In addition, as a licensed practicing professional engineer, an applicant would be expected to handle the verification with the

appropriate ethics. There were no changes made to the rule, as proposed, in response to these comments.

Several comments were received related to the specific requirements for demonstrating competence under the proposed rule. These comments suggest that the rule elaborate more specifically on types of education that would demonstrate competence. They also question the concept of requiring a reference statement to support an applicant's experience demonstration. Lastly, one comment requests that the rule specify which examinations can be used to demonstrate competence in a particular area. The Board responds to these comments by disagreeing that additional specification in the rule is necessary. The rule, as proposed, was based on existing licensing processes and procedures, which use an applicant's education, experience and examinations to determine qualification for licensure. In addition, the Board has an existing rule and uses similar processes when evaluating a licensee's request to change or indicate an additional area of competence. In implementing the new process, the Board will establish a website to provide information for any potential applicant regarding procedures, forms and answers to general questions. There were no changes made to the rule, as proposed, in response to these comments.

The new rule is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 November 21, 2011.

TRD-201105154
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 11, 2011
Proposal publication date: September 9, 2011
For further information, please call: (512) 440-7723



SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.51

The Texas Board of Professional Engineers (Board) adopts an amendment to §137.51, regarding General Practice, without changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5787) and will not be republished.

The amendment to §137.51 adds clarity and specificity to when the Board expects written responses from Board requests. The previous version stated "promptly" and that word is not well defined and in fact each person may have an interpretation of what "promptly" actually means. The rule change specifically states the requirement to be within 21 days of receipt of being notified.

The Board received comments and questions from four individuals regarding the proposed amendment. The Board responded to questions regarding the proposed change individually to address their stated concerns. Two comments on the proposed rule change to §137.51 opposed the amendment because the apparent "heavy hand" approach was for the benefit of the Texas Board of Professional Engineers bureaucracy and might be unfair to those that were on vacation or out of state for a longer period than 21 days. Another comment suggested 90 days rather than 21 days. Another commenter voiced a question as to whether an email response met that requirement, which it does. Another requestor stated that we should change the word "will" to "shall"; however, those words are synonymous with each other.

The Board addresses the comments by noting that when we reference this rule it typically is involved in an investigation whereby we are looking for a response from the P.E. in well defined communications with the respondent. It has been Board procedure to try and notify respondents and get confirmation and response from them quickly. These communiqués are often regular mail, Federal Express, email, facsimile, etc. When we do not get a response from those respondents we can move on regarding the next step in the process.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 November 21, 2011.

TRD-201105155
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 11, 2011
Proposal publication date: September 9, 2011
For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers (Board) adopts an amendment to §139.35, regarding Sanctions and Penalties, without changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5787) and will not be republished.

The amendment to §139.35 adds a clarification note to each of the tables in subsections (b), (c), (d), and (e); which states that the sanctions listed in those tables could be different based on the parameters outlined in subsection (a)(1) - (6). An additional note was included in the table in subsection (b) which stated that

for those violations that listed "suspension," the final sanction could probate all or any portion of the suspension period. Another change deleted the word "probated" for each suggested sanction that included that word. Based on guidance in House Bill 3 of the Special Session of the 2011 Legislature, two additional violations and sanctions were added in support of the Texas Department of Insurance Windstorm Inspector process. The last change was to the table in subsection (e) where the first occurrence sanction was changed from "\$1000" to "Voluntary Compliance" and the second occurrence from "\$2500" to "\$3000".

The Board received one comment regarding the amendment to §139.35; however, the issues raised did not relate to the suggested change to this rule. The Board responded to those issues with a written response.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 November 21, 2011.

TRD-201105156
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 11, 2011
Proposal publication date: September 9, 2011
For further information, please call: (512) 440-7723



PART 9. TEXAS MEDICAL BOARD

CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.6

The Texas Medical Board (Board) adopts the amendment to §171.6, concerning Duties of Program Directors to Report, with minor changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6112). The text of the rule will be republished.

The amendment to §171.6 provides that a postgraduate training program director does not have to report to the Texas Medical Board if a program participant is on leave from a program based on military leave or family leave not related to the PIT holder's medical condition.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review for Chapter 171.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern

its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §153.001 and §155.105, Texas Occupations Code.

§171.6. *Duties of Program Directors to Report.*

(a) Failure of any postgraduate training program director to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the program director.

(b) The director of each approved postgraduate training program shall report in writing to the executive director of the board the following circumstances within thirty (30) days of the director's knowledge for all participants completing postgraduate training:

(1) if a physician did not begin the training program due to failure to graduate from medical school as scheduled or for any other reason(s);

(2) if a physician has been or will be absent from the program for more than 21 consecutive days (excluding vacation, military, or family leave not related to the participant's medical condition) and the reason(s) why;

(3) if a physician has been arrested after the permit holder begins training in the program;

(4) if a physician poses a continuing threat to the public welfare as defined under Texas Occupations Code §151.002(a)(2), as amended;

(5) if the program has taken final action that adversely affects the physician's status or privileges in a program for a period longer than 30 days;

(6) if the program has suspended the physician from the program;

(7) if the program has requested termination or terminated the physician from the program, requested or accepted withdrawal of the physician from the program, or requested or accepted resignation of the permit holder from the program and the action is final.

(c) A violation of §§164.051 - 164.053 or any other provision of the Medical Practice Act is grounds for disciplinary action by the Board.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105211

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: December 18, 2011

Proposal publication date: September 16, 2011

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



CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.4

The Texas Medical Board (Board) adopts the amendment to §180.4, concerning Operation of Program, without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6422) and will not be republished.

The amendment provides that all or part of the annual fee for program participation may be waived by the governing board and establishes procedures for when the medical director requests advice from a case review panel.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review for Chapter 180.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on July 13, 2011. The comments were incorporated into the proposed rules.

The Board received one public written comment and no one appeared to testify at the public hearing held on November 4, 2011. The written comment was from an individual who related her own experience with the TXPHP. The individual did not have any recommended changes to the rule or comments on the amendments, therefore the Board adopted the amendments without change. The individual's comments were submitted to the TX-PHP for their review.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §153.001 and Chapter 167, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105212

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: December 18, 2011

Proposal publication date: September 30, 2011

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



CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, and §190.14, concerning Disciplinary Sanction Guidelines. Section 190.8 is adopted without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6432) and will not be republished. Section 190.14 is adopted with nonsubstantive changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6434). The text of the rule will be republished.

The amendment to §190.8 requires a physician that performs autopsies to obtain informed consent from a patient's authorized representatives.

The amendment to §190.14 requires the Board to revoke a physician's license if placed on deferred adjudication, community supervision for an offense related to the sexual or aggravated assault of a child, continuous sexual abuse of a child, or indecency with a child. The amendment also requires the Board to suspend or restrict a physician's license for an arrest related to the sexual or aggravated assault of a child or indecency with a child.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review for Chapter 190.

No comments were received regarding adoption of the amendments.

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§153.001, 164.057, 164.0595, and 164.102, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 28, 2011.

TRD-201105213

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: December 18, 2011

Proposal publication date: September 30, 2011

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



SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§153.001, 164.057, 164.0595, and 164.102, Texas Occupations Code.

§190.14. *Disciplinary Sanction Guidelines.*

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guide-

lines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined below shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The standard and minimum sanctions outlined below are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3) The standard and minimum sanctions outlined below are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation".

(4) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) The following standard sanctions shall apply to violations of the Act:

(A) Failure to timely provide copies of medical or billing records upon written request or overcharging for medical records is an administrative violation.

(i) Violation of:

(I) Section 159.006 of the Act - information furnished by licensee; and

(II) Section 164.051(a)(3) of the Act - violation of Board Rule, to wit: §165.2 of this title (relating to Medical Record Release and Charges).

(ii) Standard Sanction: administrative penalty of \$1,000 per violation.

(B) Failure to timely comply with a board subpoena or request for information is an administrative violation.

(i) Violation of §160.009 of the Act and board rule §179.4 of this title (relating to Request for Information and Records from Physicians).

(ii) Standard Sanction is an administrative penalty of \$2,000.

(C) Conviction or deferred adjudication for a felony may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §164.051(a)(2)(A) of the Act, §204.303(a)(2) of the Physician Assistant Act, and §205.351(a)(7) of the Acupuncture Act.

(ii) In accordance with §164.057(a)(1)(A) of the Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted of any felony.

(iii) In accordance with §164.057(b) of the Act, the board shall revoke the licensee's license on final conviction for a felony.

(D) Conviction or deferred adjudication for a misdemeanor involving moral turpitude may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §164.051(a)(2)(B) of the Act and §205.351(a)(7) of the Acupuncture Act.

(ii) Standard Sanction:

(I) If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.

(II) If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require:

(-a-) Suspension of license, which may be probated after 90 days;

(-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication;

(-c-) public reprimand; and

(-d-) administrative penalty of \$2,000 per violation.

(E) Conviction of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation may be either an administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §53.021, Texas Occupations Code.

(ii) Standard Sanction:

(I) If the offense involves patient care, the standard sanction shall be revocation of the license.

(II) If the offense does not involve patient care and is an administrative violation only, the standard sanction shall require:

(-a-) public reprimand; and

(-b-) an administrative penalty of \$2,000 per violation.

(F) Arrest or Conviction of Certain Misdemeanors.

(i) In accordance with §164.057(a)(1)(B), (C), (D), and (E) of the Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted any of the following misdemeanors:

(I) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(II) a misdemeanor under §25.07, Penal Code, or

(III) a misdemeanor under §25.071, Penal Code.

(ii) In accordance with §164.057(b) of the Act, the board shall revoke the licensee's license on final conviction of any of the misdemeanors listed in clause (i) of this subparagraph.

(iii) In accordance with §164.057(c) of the Act, the board shall revoke the license of a physician convicted of or placed on deferred adjudication community supervision for an offense under:

(I) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(II) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(III) Section 21.11, Penal Code (indecent with a child).

(iv) In accordance with §164.057(c) of the Act, the board may restrict or suspend the licensee's license of a person arrested for an offense under:

(I) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(II) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(III) Section 21.11, Penal Code (indecent with a child); or

(IV) Section 21.02, Penal Code (continuous sexual abuse of a young child or children).

(G) Failure to obtain/document continuing medical education is an administrative violation.

(i) Violation of §164.051(a)(3) of the Act, or violation of board rule §166.2 of this title (relating to Continuing Medical Education).

(ii) Standard Sanction shall be an administrative penalty of:

(I) \$500 if lacking 5 hours or less;

(II) \$1,000 if lacking 6 to 10 hours; or

(III) \$2,000 if lacking more than 10 hours.

(H) Impairment of ability to practice may be either an aggravated administrative violation or a patient care violation, depending on the whether a violation of the standard of care has resulted from the impairment.

(i) Within the meaning of §164.051(a)(4) of the Act - inability to practice medicine with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, or a mental condition.

(ii) Standard Sanction: suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine.

(iii) Alternate Standard Sanction: probation of suspension for 10 years under terms and conditions, including, but not limited to:

(I) drug testing;

(II) restrictions on practice;

(III) alcoholics anonymous/narcotics anonymous attendance;

(IV) psychiatric/psychological evaluation and treatment; and

(V) proficiency testing.

(iv) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) provides guidance on whether a licensee is eligible for and should be placed under a confidential rehabilitation order.

(I) Failure to maintain adequate medical records may be either an administrative violation or a patient care violation, depending on whether a patient was harmed because of the failure.

(i) Violation of:

(I) Section 164.051(a)(6) of the Act - professional failure to practice medicine consistent with the public health and welfare;

(II) Section 164.054 of the Act - additional requirements regarding drug records;

(III) Section 164.053(a)(2) of the Act - failure to keep complete and accurate records of purchases and disposals of controlled substances and dangerous drugs, and

(IV) Section 164.051(a)(3) of the Act - violation of board rules, including:

(-a-) board rule §165.1(a) of this title (relating to Medical Records) - failure to maintain adequate medical records; and

(-b-) board rule §170.3 of this title (relating to Authority of Physician to Prescribe for the Treatment of Pain) - prescribing guidelines for the treatment of pain.

(ii) Standard Sanction: probation for 2 years under terms and conditions, including, but not limited to:

(I) competency testing;

(II) directed CME;

(III) monitoring of practice; and

(IV) administrative penalty of \$2,000 per violation.

(J) Quality of Care is a patient care violation.

(i) Violations of:

(I) Section 164.051(a)(6) of the Act - failure to practice medicine in a professional manner consistent with the public health and welfare; and

(II) Section 164.051(a)(8) of the Act - repeated and meritorious medical malpractice claims.

(ii) Standard Sanction:

(I) The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be one or more of the following:

(-a-) limiting the practice of the person, or excluding one or more specified activities of medicine;

(-b-) proficiency testing;

(-c-) directed CME;

(-d-) monitoring of the practice;

(-e-) public reprimand; and

(-f-) administrative penalty of \$3,000 per violation.

(II) Standard sanction in a case involving patient harm or other aggravating factors shall be:

(-a-) suspension of license for 3 years;

(-b-) suspension may be probated after 90 days under terms and conditions similar to those described in subclause (I) of this clause, immediately preceding.

(K) Discipline by peers may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action.

(i) Within the meaning of §164.051(a)(7) of the Act.

(ii) Standard Sanction: See the applicable standard sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers.

(iii) Alternate Standard Sanction:

(I) public reprimand;

(II) comply with all restrictions, conditions and terms imposed by the disciplinary action by peers; and

(III) administrative penalty of \$1,000 per violation.

(L) Disciplined by another state or military may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action.

(i) Within the meaning of §164.051(a)(9) of the Act.

(ii) Standard Sanction: See the applicable standard sanction for the most similar violation of the Act. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the other state or military.

(iii) Alternate Standard Sanction:

(I) comply with all restrictions, conditions and terms imposed by the other state or military; and

(II) administrative penalty of \$1,000 per violation.

(iv) The standard sanction for a licensee whose license has been revoked by another state or who has voluntarily surrendered his license while an investigation or disciplinary action is pending shall be revocation of the license.

(M) Improper prescribing, dispensing, or administering of drugs is a patient care violation.

(i) Violation of:

(I) Section 164.053(a)(3) of the Act - prescribing or dispensing drugs to a drug abuser;

(II) Section 164.053(a)(5) of the Act - prescribing or administering drugs in a non therapeutic manner; and

(III) Section 164.053(a)(6) of the Act - prescribing or administering drugs in a manner inconsistent with the public health and welfare.

(ii) Standard Sanction: The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be:

(I) suspension of license for 2 years.

(II) suspension probated after 60 days under terms and conditions, including, but not limited to:

(-a-) restrictions on practice, including prescribing, administering controlled substances and dangerous drugs;
(-b-) proficiency testing;
(-c-) directed CME; and
(-d-) administrative penalty of \$2,000 per violation.

(N) Writing false or fictitious prescriptions is a patient care violation.

(i) Violation of §164.053(a)(4) of the Act.

(ii) Standard Sanction:

(I) suspension of license for 4 years;

(II) suspension probated after 90 days under terms and conditions, including, but not limited to:

(-a-) restrictions on practice including restrictions on prescribing, administering controlled substances and dangerous drugs;

(-b-) proficiency testing;

(-c-) directed CME; and

(-d-) administrative penalty of \$2,000 per violation.

(O) Fraudulent, improper billing practices is an aggravated administrative violation.

(i) Violation of §164.053(a)(7) of the Act.

(ii) Standard Sanction:

(I) suspension of license for 3 years;

(II) suspension probated after 90 days under terms and conditions, including, but not limited to:

(-a-) monitoring of practice, including billing practices;

(-b-) directed CME;

(-c-) restitution; and

(-d-) administrative penalty of \$3,000 per violation.

(P) Failing to adequately supervise subordinates and improper delegation is a patient care violation.

(i) Violation of:

(I) Section 164.053(a)(8) of the Act and

(II) Section 164.053(a)(9) of the Act.

(ii) Standard Sanction:

(I) suspension of license for 3 years;

(II) suspension probated after 60 days under terms and conditions, including, but not limited to:

(-a-) monitoring of practice;

(-b-) directed CME; and

(-c-) administrative penalty of \$2,000 per violation.

(Q) Failure to comply with the terms and conditions of a Board order may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the failure.

(i) Within the meaning of §164.103 of the Act - rescission of probation.

(ii) Standard Sanction:

(I) public reprimand;

(II) extension of the Board order by 6 months for each violation; and

(III) administrative penalty of \$2,000 per violation.

(iii) Unless the board finds that the facts warrant a less severe sanction, the license of a person who violates a Board order to abstain from the consumption of alcohol and/or drugs, as evidenced by a positive drug test or other proof, shall be revoked.

(R) Failure to report a health care liability claim is an administrative violation.

(i) Violation of §160.052(b) of the Act and §176.2 of this title (relating to Reporting Responsibilities).

(ii) Standard Sanction shall be \$500 for each violation.

(S) Failure to notify the board of change in practice or mailing address is an administrative violation.

(i) Violation of §166.1(d) of this title (relating to Physician Registration).

(ii) Standard Sanction shall be \$500.

(T) Failure to maintain drug logs as required by an agreed order is an administrative violation.

(i) Violation of §190.8(2)(A) of this title (relating to Violation Guidelines).

(ii) Standard sanction is \$2,000.

(U) Failure to display a "Notice Concerning Complaints" sign as required by §178.3 of this title (relating to Complaint Procedure Notification) is an administrative violation.

(i) Violation of §178.3 of this title.

(ii) Standard sanction shall be \$1,000.

(V) Use of misleading advertising with regard to board certification is an administrative violation.

(i) Violation of §164.4 of this title (relating to Board Certification).

(ii) Standard sanction shall be \$500.

(W) Reporting false or misleading information on an initial application for licensure or for licensure renewal is an administrative violation.

(i) Violation of §164.052(a)(1) of the Act.

(ii) Standard Sanction is \$1,000.

(X) Bad faith mediation by a licensee in relation to an out-of-network health benefit claim.

(i) Violation of §1467.101 of the Texas Insurance Code.

(ii) Standard Sanction is \$2,000.

(Y) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions stated in subparagraphs (A) - (X) of this paragraph.

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 November 28, 2011.

TRD-201105214

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: December 18, 2011

Proposal publication date: September 30, 2011

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



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.3

The Texas Optometry Board adopts amendments to §271.3, concerning Jurisprudence Examination Administration without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5623).

The amendments provide for examination accommodations for test applicants diagnosed with dyslexia.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.255, and Senate Bill 867, 82nd Legislature, Regular Session, 2011. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.255 as setting the requirements for the Board's examination, and Senate Bill 867, 82nd Legislature, Regular Session, 2011, as requiring accommodations for applicants with dyslexia.

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 November 22, 2011.

TRD-201105164

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: December 12, 2011

Proposal publication date: September 2, 2011

For further information, please call: (512) 305-8502



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.24

The Texas Department of Public Safety (the department) adopts amendments to §15.24, concerning Identification of Applicants. This section is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6871) and will not be republished.

These amendments are necessary because certain provisions of Senate Bill 1 of the 82nd Legislature, 2011, First Called Session, supersede the provisions of this rule. Additionally, these rule changes are in response to the department's recently completed agreement with the U.S. Citizenship and Immigration Services for access to its database to confirm the immigration status of driver license and identification card applicants. This agreement will allow the department to independently verify the documents issued by federal immigration authorities and presented by applicants to obtain a Texas driver license or identification card. Currently, applicants who presented a document issued by U.S. Citizenship and Immigration Services for a foreign passport, U.S. visa, and form I-94 with a fixed duration needed to present a document or form I-94 that was issued for a period of at least one year and had at least six months of validity remaining at the time of application for a Texas driver license or identification card in order to be accepted by the department. The independent verification eliminates the need for the federal immigration documentation presented by an applicant to be issued for one year and have at least six months of validity remaining.

Additional amendments were necessary to reflect that name changes have occurred and will continue to occur for the federal agencies responsible for immigration. This rule is also amended to reflect that certain groups of individuals may not be required to obtain or present a U.S. visa in order to enter the United States. For these individuals, this rule is amended to allow the department to waive the U.S. visa requirement found in paragraph (1)(F) and (1)(G).

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521.

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 November 23, 2011.

TRD-201105182

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: December 13, 2011

Proposal publication date: October 14, 2011

For further information, please call: (512) 424-5848

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SUBCHAPTER K. SPECIAL PROVISIONS FOR NON-CITIZENS

37 TAC §15.171

The Texas Department of Public Safety (the department) adopts the repeal of §15.171, concerning Issuance of Driver Licenses and Identification Certificates to Non-citizens. This repeal is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6872) and will not be republished.

The repeal of §15.171 is necessary because certain provisions of Senate Bill 1 of the 82nd Legislature, 2011, First Called Session, supersede this rule.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521.

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 November 23, 2011.

TRD-201105183

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: December 13, 2011

Proposal publication date: October 14, 2011

For further information, please call: (512) 424-5848

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SUBCHAPTER L. ELECTION IDENTIFICATION CERTIFICATE

37 TAC §§15.181 - 15.185

The Texas Department of Public Safety (the department) adopts new §§15.181 - 15.185, concerning Election Identification Certificate. These new sections are adopted with changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6873) and will be republished.

The 82nd Texas Legislature enacted Transportation Code, Chapter 521A, which requires the department to issue election identification certificates. These rules are necessary to inform the public of what will be required of applicants for issuance of an election identification certificate and allow the public to have a role in establishing the process.

The department accepted comment on the proposed rules through November 14, 2011. Written comments were submitted by Senator Leticia Van de Putte, R. Ph. and Karen Nicholson representing League of Women Voters of Texas (LWV). Changes were made to proposed new §15.182 based on the

comments received by the department. Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: Regarding §15.181(d)(1), (2), (4) and (5), LWV recommended amending the requirement that an applicant who holds a driver license, election identification certificate, personal identification certificate, U.S. passport, or concealed handgun license that expired no earlier than 60 days before the date of application, by adding 30 days to allow additional processing time for processing for an expired document. The comments further state that the rules need to clarify the time it will take to process an election identification certificate and whether a receipt issued at application will be accepted at the polls.

RESPONSE: The department disagrees with these recommendations. The Secretary of State determines what documents will be accepted at the polls and has informed the department that the receipt issued upon application will be accepted in the same manner as a driver license, election identification certificate, or personal identification certificate as long as the photo is included. Additionally, since the receipt will be accepted and local elections do not always fall on uniform election dates; the department determined wording should mirror that in the statute.

COMMENT: Regarding §15.182(2), LWV recommended allowing all photo IDs qualified under SB14 and all primary identification accepted for a driver license or personal identification certificate as primary identification for an election identification certificate. LWV asserted that only allowing a driver license or personal identification certificate that has expired for at least 60 days and no more than two years is unnecessarily limiting.

RESPONSE: The department disagrees with this recommendation. The other documents allowed for primary identification are also acceptable for voting purposes or are accepted only for persons who are not U.S. citizens. Persons who hold acceptable documents for voting and non-citizens are not eligible for an election identification certificate.

COMMENT: Regarding §15.182(3), LWV recommended allowing more types of secondary identification than U.S. birth certificates, certificates of birth abroad, or specific court orders, stating that persons who cannot afford to secure certified documents or for whom no birth certificate is available may not be able to provide documents to meet the requirements. LWV also noted that old citizenship documents might not contain photographs so some naturalized citizens may not have acceptable voting documents and the rule does not accommodate them.

RESPONSE: The department disagrees with part of this recommendation. Expanding the list of acceptable secondary documents to include those that are not issued by a verifiable governmental source opens the process up to a greater fraud potential. The department agrees with the recommendation to include citizenship documents without photographs. To accommodate naturalized citizens with older documents, the department changed the wording in §15.182(2) to add citizenship certificates or certificates of naturalization without photographs.

COMMENT: Regarding §15.182(4), Senator Van de Putte recommended including the VA card on the supporting documents list. LWV recommended that the list of supporting documents should be as broad as that for securing a driver license or personal identification certificate. LWV also stated that the rules should include all acceptable documents and not include the statement that the list is not all-inclusive.

RESPONSE: The department agrees with this recommendation. Fifteen additional documents accepted for driver license and identification cards were added to §15.82(4)(M) - (BB), the list including the Veteran's Administration (VA) card. The statement that this list is not all-inclusive was deleted from §15.182(4).

COMMENT: Regarding §15.183(a)(1)(A), LWV recommended making the wording of this section gender-neutral and allowing the name to be the same as the name used for voter registration.

RESPONSE: The department disagrees with these recommendations. The reference to married women is specific while the statement that the section applies to both sexes refers to the use of previously documented names. This section of the rule is the same as that used for issuance of a driver license or personal identification certificate as allowed under the law. Election workers have the ability and guidance from the Secretary of State to determine if the name on the voter list and the presented identification are similar.

COMMENT: Regarding the location of driver license offices, Senator Van de Putte raises concerns that citizens will have to travel outside of their home counties to obtain an election identification certificate. She also recommends that all communications regarding the election identification certificate issuance be in English, Spanish, and any other language necessary to reach minority voters.

RESPONSE: The department does not take a position on these comments as they go beyond the scope of rulemaking.

Additionally, the department changed the text of §15.182(4)(D) from "vehicle title" to "Texas vehicle or boat title or registration" for the purposes of clarity.

These new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, Chapter 521A, which authorizes the department to issue no-cost election identification certificate to eligible applicants.

§15.181. Eligibility for Election Identification Certificate.

(a) An applicant must be at least 17 years and 10 months of age in order to apply for an election identification certificate.

(b) An applicant must affirm that the person is obtaining the certificate for the purpose of satisfying Election Code, §63.001(b) and does not have another form of identification described by Election Code, §63.0101.

(c) An applicant must:

(1) Be a registered voter in this state and present a voter registration card issued to the individual; or

(2) Be eligible for voter registration under Election Code, §13.001 and submit an application for voter registration.

(d) An applicant who has been issued any of the following documents is not eligible to receive an election identification certificate:

(1) A driver license, election identification certificate, or personal identification certificate issued by the department that has not expired or that expired no earlier than 60 days before the date of application;

(2) A United States military identification card that contains the person's photograph that has not expired or that expired no earlier than 60 days before the date of application;

(3) A United States citizenship certificate issued to the person that contains the person's photograph;

(4) A United States passport issued to the person that has not expired or that expired no earlier than 60 days before the date of application; or

(5) A license to carry a concealed handgun issued to the person by the department that has not expired or that expired no earlier than 60 days before the date of application.

§15.182. Identification of Applicants.

An applicant for an election identification certificate must provide documents satisfactory to the department. All documents must be verifiable.

(1) An original applicant for an election identification certificate must present:

(A) One piece of primary identification;

(B) Two pieces of secondary identification; or

(C) One piece of secondary identification plus two pieces of supporting identification.

(2) Primary Identification. A Texas driver license or personal identification card issued to the person that has been expired for 60 days and is within two years of expiration date may be presented as primary identification.

(3) Secondary identification. These items are recorded governmental documents (United States, one of the 50 states, a United States territory, or District of Columbia):

(A) Original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency;

(B) Original or certified copy of United States Department of State Certification of Birth (issued to United States citizens born abroad);

(C) Original or certified copy of court order with name and date of birth (DOB) indicating an official change of name and/or gender; or

(D) U.S. citizenship or naturalization papers without identifiable photo.

(4) Supporting identification. The following items consist of other records or documents that aid examining personnel in establishing the identity of the applicant:

(A) voter registration card;

(B) school records;

(C) insurance policy (at least two years old);

(D) Texas vehicle or boat title or registration;

(E) military records;

(F) unexpired military dependant identification card;

(G) original or certified copy of marriage license or divorce decree;

(H) Social Security card;

(I) pilot's license;

(J) unexpired photo DL or photo ID issued by another (United States) state, U.S. territory, the District of Columbia;

(K) expired photo DL or photo ID issued by another (United States) state, U.S. territory, or the District of Columbia that is within two years of the expiration date;

(L) an offender identification card or similar form of identification issued by the Texas Department of Criminal Justice;

(M) forms W-2 or 1099;

(N) Numident record from the Social Security Administration;

(O) expired Texas driver license or personal identification certificate (expired more than two years);

(P) professional license issued by Texas state agency;

(Q) identification card issued by government agency;

(R) parole or mandatory release certificate issued by the Texas Department of Criminal Justice;

(S) federal inmate identification card;

(T) federal parole or release certificate;

(U) Medicare or Medicaid card;

(V) Selective Service card;

(W) immunization records;

(X) tribal membership card from federally recognized tribe;

(Y) Certificate of Degree of Indian Blood;

(Z) Veteran's Administration card;

(AA) hospital issued birth record; or

(BB) any document that may be added to §15.24 of this title (relating to Identification of Applicants) other than those issued to persons who are not citizens of the U.S.

§15.183. *Application Requirements.*

(a) An application for an election identification certificate must include:

(1) the applicant's full name:

(A) A married woman may use her maiden name or she may adopt the surname of her husband or the surname of a previous husband. No name will be used that has not been documented. Middle names will not be substituted for first names. Three full names will be used, unless the applicant does not have three names, including the maiden name. This section applies to both sexes.

(i) When change of name occurs because of marriage, divorce, annulment, or death of spouse, the certificate holder may choose to keep her current married name, revert to her maiden name, or adopt a previous husband's surname. Name changes for reasons other than those set out above require a court order verifying such change.

(ii) Certificate holders who request a name change may apply for a duplicate and exercise the same privilege in name selection as an original applicant.

(B) Foreign language names will be spelled out as they appear on the identification documents presented. English versions of names will not be substituted for the actual name.

(C) Ecclesiastical names such as Brother Thomas, Sister Mary, or Father Kelly are not used.

(2) the applicant's place and date of birth;

(3) the fingerprints of the applicant; this does not apply to an applicant who is permitted and utilizes an alternative method for renewing or duplicating an election identification certificate;

(4) a photograph of the applicant;

(5) the signature of the applicant; the applicant's usual signature, in ink, is required on all applications for an election identification certificate:

(A) The primary purpose of the signature is to identify the applicant and verify the information given on the application.

(B) If an applicant cannot write his name, he may make his "mark." This is usually a cross in the place of his signature followed by the applicant's printed name. The Driver License field employee shall sign under the applicant's "mark" showing who printed the applicant's name.

(6) a brief description of the applicant;

(7) the sex of the applicant;

(8) the residence address of the applicant;

(9) whether the applicant is a citizen of the United States; and

(10) the county of residence of the applicant.

(b) Social Security number. Applicants for an election identification certificate will be asked to provide verification of Social Security number documentation. If the applicant fails or refuses to provide that social security information, the election identification certificate will be issued without such documentation unless state or federal statute requires otherwise. Acceptable documents to provide verification of Social Security number are listed in §15.42 of this title (relating to Social Security Number).

(c) Notarizations. The applicant must verify original election identification certificate applications before a person authorized to administer oaths. The following officials may administer such oaths or affirmations:

(1) within the State of Texas:

(A) a judge, clerk, or commissioner of any court of record;

(B) a notary public;

(C) a justice of the peace;

(D) authorized employees of the Department of Public Safety;

(2) general:

(A) in the absence of evidence to the contrary, it is presumed that all notarizations are legally made;

(B) the omission of the seal by officers normally required to use same for notarization invalidates the oath;

(C) notarized election identification certificate applications must be dated not more than six months prior to date of application.

§15.184. *Expiration, Renewal, and Replacement of Election Identification Certificate.*

(a) Expiration.

(1) An Election Identification Certificate expires on the first birthday of the cardholder occurring after the sixth anniversary of the date of the application.

(2) An Election Identification Certificate issued to a person 70 years of age or older does not expire.

(b) Renewal.

(1) An applicant for renewal of an election identification certificate must present evidence of eligibility, under §15.181 of this title (relating to Eligibility for Election Identification Certificate) plus one other piece of personal identification if the election identification certificate is not presented, if necessary to identify the applicant, prior to renewal.

(2) An election identification certificate may be renewed 12 months before expiration date. Earlier renewals will be accepted for good cause.

(3) The department may provide certificate holders with alternate methods of renewing or duplicating an election identification certificate.

(c) Applications for Replacements and Corrections. An application for replacement will be accepted in any of the following cases:

(1) when an election identification certificate has been lost, destroyed, marred, or mutilated;

(2) when there has been a change of name and/or gender.

§15.185. *Cancellation and Surrender.*

The department may cancel and require surrender of an election identification certificate upon confirmation that the certificate was issued to a person not entitled thereto.

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 November 23, 2011.

TRD-201105184

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: December 13, 2011

Proposal publication date: October 14, 2011

For further information, please call: (512) 424-5848



CHAPTER 27. CRIME RECORDS

SUBCHAPTER C. TATTOO MARKS FOR HOGS, DOGS, SHEEP, OR GOATS

37 TAC §27.31

The Texas Department of Public Safety (the department) adopts the repeal of §27.31, concerning Registration of Tattoo Marks. This repeal is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6875) and will not be republished.

The repeal is necessary because Subchapter E, Chapter 144, Agriculture Code, Registration of Animal Tattoo Marks was repealed by the 82nd Legislature and registration of animal tattoo marks by the department is no longer authorized by statute.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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 November 23, 2011.

TRD-201105185

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: December 13, 2011

Proposal publication date: October 14, 2011

For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts the amendments to §452.2, concerning Advisory Committees, with changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5316) and will be republished.

The adopted amendments to §452.2 streamline and consolidate the rules governing the agency's advisory committees. The amendments incorporate existing rules that govern the Veterans Employment and Training Advisory Committee, the Fund for Veterans' Assistance Advisory Committee, and the Veterans Communication Advisory Committee that are concurrently being repealed in Chapter 458, relating to Statutory Advisory Committees. The adopted amendments to §452.2 will eliminate duplication of rules and will improve the clarity and consistency of the agency's rule governing its advisory committees.

The commission has made a minor correction to the proposed language in §452.2(b)(2), (c)(2), and (d)(2) to change the word "should" to "may." This amendment was inadvertently omitted from the proposed rules.

No comments were received regarding the proposed amendments to this rule.

The amendments are adopted under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

§452.2. *Advisory Committees.*

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) Agency role. The Executive Director may direct one or more staff members of the agency to assist each advisory committee. These positions shall be non-voting.

(2) Committee size and appointment of members. Each advisory committee shall be composed of nine members appointed by the commission. Members of each committee serve at the pleasure of the commission, and may be removed from a committee by a majority vote of the commission.

(3) Committee chair. The chair of each advisory committee is designated by and serves at the pleasure of the commission. The committee chair determines the agenda for each meeting.

(4) Conditions of membership.

(A) Terms of service. The term of office for each member appointed by the commission shall be staggered for a two-year term. In the event that a member appointed by the commission cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) Participation. Participation on an advisory committee is voluntary.

(C) Compensation. Advisory committee members appointed by the commission shall serve without compensation. Travel reimbursement and per diem incurred in the performance of official duties will be paid only if authorized by the Texas Legislature in the General Appropriations Act.

(5) Training. Each committee member shall receive initial training to ensure compliance with the Open Meetings Act. Training should also include an overview of the agency's mission and organizational structure, the overall purpose or goals of the committee, as well as other information that will assist members accomplish committee goals.

(6) Responsibilities. Each advisory committee will review issues and provide advice to the commission, as charged by the commission.

(7) Meetings. Each advisory committee shall meet at least quarterly unless otherwise directed by the commission. Advisory committee meetings may be conducted by telephone conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist of a majority of the committee membership. The committees shall comply with Open Meetings requirements as provided in Texas Government Code, Chapter 551.

(8) Reports. The committee chair or designee of each advisory committee shall regularly report to the commission regarding its activities and recommendations, and, when requested by the commission, shall file with the commission a report containing:

- (A) the minutes of meetings;
- (B) a memo summarizing the meetings; and
- (C) a list of the committee's recommendations, if any.

(9) Evaluation and duration. Each advisory committee shall remain in existence as long as deemed necessary by the commission based on a regular evaluation of the continuing need for each advisory committee. The Executive Director or staff may assist with this evaluation at the direction of the commission.

(b) Veterans Employment and Training Advisory Committee.

(1) Purpose. The purpose of the Veterans Employment and Training Advisory Committee is to seek the input of employers to better assist veterans in gaining successful employment and/or training.

(2) Committee member qualifications. Members may include individuals who are recognized authorities in the fields of business, employment, training, rehabilitation or labor or are nominated by veterans' organizations that have a national employment program.

(c) Fund for Veterans' Assistance Advisory Committee.

(1) Purpose. The purpose of the Fund for Veterans' Assistance Advisory Committee is to evaluate grant applications and make recommendations to the commission.

(2) Committee member qualifications. Members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

(3) Meetings. The Fund for Veterans' Assistance Advisory Committee shall meet as needed to make grant recommendations to the commission.

(d) Veterans Communication Advisory Committee.

(1) Purpose. The purpose of the Veterans Communication Advisory Committee is to develop recommendations to improve communications with veterans, their families, and the general public regarding the services provided by the Texas Veterans Commission and information on benefits and assistance available to veterans from federal, state, and private entities.

(2) Committee member qualifications. Members may include representatives from the communications industry, state agencies, the Texas National Guard, U.S. Armed Forces reserve components, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

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 November 22, 2011.

TRD-201105172

H. Karen Fastenau

General Counsel

Texas Veterans Commission

Effective date: December 12, 2011

Proposal publication date: August 26, 2011

For further information, please call: (512) 463-1981



CHAPTER 458. STATUTORY ADVISORY COMMITTEES

40 TAC §§458.1 - 458.3

The Texas Veterans Commission (commission) adopts the repeal of Chapter 458, §§458.1 - 458.3, concerning Statutory Advisory Committees, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5318) and will not be republished.

The repeal of Chapter 458, §§458.1 - 458.3 eliminates duplication of rules that currently exists between Chapter 458 and

§452.2. This repeal removes the existing rules that govern the Veterans Employment and Training Advisory Committee, the Fund for Veterans' Assistance Advisory Committee, and the Veterans Communication Advisory Committee. These rules will be streamlined and incorporated under §452.2, relating to Advisory Committees, which is concurrently being amended. This will improve clarity and consistency of the agency's rules and improve the overall successful performance of the advisory committees to meet the needs of more Texas veterans and their families.

No comments were received regarding the proposed repeal of these rules.

The repeal is adopted under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

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 November 22, 2011.

TRD-201105173

H. Karen Fastenau

General Counsel

Texas Veterans Commission

Effective date: December 12, 2011

Proposal publication date: August 26, 2011

For further information, please call: (512) 463-1981



CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §§460.1, 460.2, 460.5, 460.8 - 460.10, 460.12, 460.16

The Texas Veterans Commission (commission) adopts the amendments to Chapter 460, Subchapter A, §460.1, Purpose; §460.2, Definitions; §460.5, Performance Measures; §460.8, Grant Objectives; §460.9, Administrative Costs, and §460.10, Limitations on Grant Funds; and new §460.12, Grant Amendments; and §460.16, Housing4TexasHeroes, without changes to the proposed text as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6714) and will not be republished.

The adopted amendments and new sections are necessary to comply with the requirements of House Bill (HB) 1, 82nd Legislature, Regular Session (2011). HB 1 transferred funds from the state Housing Trust Fund to the commission for the purpose of administering, operating, and expending funds for Housing4TexasHeroes (H4TH) to assist Texas veterans and their families in obtaining, maintaining, or improving housing. The amendments also further define the purpose and objectives of the Fund for Veterans' Assistance (FVA) Program and clarify the administration of the FVA as a reimbursement grant program.

The commission received written comments from the Veteran Service Office of Rains County, Texas (Rains County) regarding the proposed amendments. Rains County requested to add an exception to the rule language in §460.10 to allow grant funds to be used on capital leases for county governments to lease and subsequently purchase vehicles exclusively to transport veterans and eligible dependents to U.S. Department of Veterans Affairs (VA) medical appointments.

The commission has previously considered the issue of allowing capital expenditures with grant funds awarded by the FVA. The commission decided against expanding the rule to allow for capital leases of vehicles with FVA funds. The current rule amendment was proposed for the narrow purpose of allowing capital expenditures with grant funds specifically awarded under the Housing4TexasHeroes grant program because this exception is mandated under the requirements of HB 1. The commission declined to further amend the proposed rule in response to this comment.

The amendments and new sections are adopted under Texas Government Code §434.010, which authorizes the commission to establish rules that it considers necessary for the effective administration of the Agency, and Texas Government Code §434.017, which authorizes the commission to establish rules governing the award of grants by the commission.

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

Filed with the Office of the Secretary of State on November 22, 2011.

TRD-201105177

H. Karen Fastenau

General Counsel

Texas Veterans Commission

Effective date: December 12, 2011

Proposal publication date: October 7, 2011

For further information, please call: (512) 463-1981



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Council on Sex Offender Treatment

Rule Transfer

Title 22, Part 36

Through the enactment of Senate Bill 166, 82nd Legislature, 2011, the Governor and the Legislature have transferred the functions related to the sex offender civil commitment program currently performed by the Council on Sex Offender Treatment (CSOT) at the Department of State Health Services to the Office of Violent Sex Offender Management (office). The agency, newly created under the Government Code, Chapter 420A, is solely responsible for providing monitoring and treatment of civilly committed sex offenders under Health and Safety Code, Chapter 841.

The CSOT will continue to perform its licensing functions under Texas Occupations Code, Chapter 110.

The CSOT's rules concerning civil commitment for sex offenders are currently located in the Texas Administrative Code, Title 22, Part 36, Chapter 810, Subchapters E, F, H, I, J, and K. The rules will be transferred and reorganized as Title 37, Part 16, Chapter 810, Subchapters A, B, C, D, E, and F. The rule numbers are unchanged.

This transfer took effect September 1, 2011.

Please refer to Figure: 22 TAC Chapter 810 to see the complete conversion chart.

TRD-201105180



Office of Violent Sex Offender Management

Rule Transfer

Title 37, Part 16

Through the enactment of Senate Bill 166, 82nd Legislature, 2011, the Governor and the Legislature have transferred the functions related to the sex offender civil commitment program currently performed by the Council on Sex Offender Treatment (CSOT) at the Department of State Health Services to the Office of Violent Sex Offender Management (office). The agency, newly created under the Government Code, Chapter 420A, is solely responsible for providing monitoring and treatment of civilly committed sex offenders under Health and Safety Code, Chapter 841.

The CSOT will continue to perform its licensing functions under Texas Occupations Code, Chapter 110.

The CSOT's rules concerning civil commitment for sex offenders are currently located in the Texas Administrative Code, Title 22, Part 36, Chapter 810, Subchapters E, F, H, I, J, and K. The rules will be transferred and reorganized as Title 37, Part 16, Chapter 810, Subchapters A, B, C, D, E, and F. The rule numbers are unchanged.

This transfer took effect September 1, 2011.

Please refer to Figure: 22 TAC Chapter 810 to see the complete conversion chart.

TRD-201105181

Figure: 22 TAC Chapter 810

Current rules from Title 22, Part 36, Council on Sex Offender Treatment			Transferred to Title 37, Part 16, Office of Violent Sex Offender Management		
Chapter 810, Council on Sex Offender Treatment			Chapter 810, Civil Commitment		
Subchapter	Section	Heading	Subchapter	Section	Heading
Subchapter E		Civil Commitment General Provisions	Subchapter A		Civil Commitment General Provisions
	§810.121	Introduction		§810.121	Introduction
	§810.122	Definitions		§810.122	Definitions
Subchapter F		Civil Commitment	Subchapter B		Civil Commitment
	§810.151	Administration of the Act		§810.151	Administration of the Act
	§810.152	Civil Commitment of Sexually Violent Predators		§810.152	Civil Commitment of Sexually Violent Predators
	§810.153	Outpatient Treatment and Supervision Program		§810.153	Outpatient Treatment and Supervision Program
Subchapter H		Civil Commitment Review	Subchapter C		Civil Commitment Review
	§810.211	Biennial Examination		§810.211	Biennial Examination
Subchapter I		Petition for Release	Subchapter D		Petition for Release
	§810.241	Authorized Petition for Release		§810.241	Authorized Petition for Release
	§810.242	Unauthorized Petition for Release		§810.242	Unauthorized Petition for Release
Subchapter J		Miscellaneous Provisions	Subchapter E		Miscellaneous Provisions
	§810.271	Release and Exchange of Information		§810.271	Release and Exchange of Information
	§810.272	Council Appointment of Multidisciplinary Members		§810.272	Office Appointment of Multidisciplinary Members
	§810.273	Cost of Tracking Service		§810.273	Cost of Tracking Service
Subchapter K		Criminal Background Check of Potential Employees	Subchapter F		Criminal Background Check of Potential Employees
	§810.281	Access to Criminal History Records		§810.281	Access to Criminal History Records
	§810.282	Records		§810.282	Records
	§810.283	Destruction of Criminal History Records		§810.283	Destruction of Criminal History Records

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

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 87, concerning Tax Refund Anticipation Loans. Chapter 87 contains Subchapter A, concerning Registration Procedures. Subchapter A consists of §87.102, concerning Filing of New Application, §87.103, concerning Processing of Application, §87.104, Relocation of Registered Location, §87.105, concerning Fees, §87.106, concerning Applications and Notices as Public Records, and §87.107, concerning Annual Renewal.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201105167

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 22, 2011



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 108, Fees.

§108.1. Charges for Copies of Public Information.

The Division will consider whether the reasons for initially adopting this rule continues to exist and whether this rule should be repealed, readopted, or readopted with amendments. Any repeal or necessary amendments identified during the review of this rule will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether this rule should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST January 9, 2012. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201105255

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: November 30, 2011



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 283 (§§283.1 - 283.11), concerning Licensing Requirements for Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency review of Existing Rules.

All comments regarding the rule review 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., January 13, 2012.

TRD-201105200

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: November 28, 2011



The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter B (§§291.31 - 291.35), concerning

Community Pharmacy (Class A), pursuant to the Texas Government Code §2001.039, regarding Agency review of Existing Rules.

All comments regarding the rule review 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., January 13, 2012.

TRD-201105201
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: November 28, 2011

◆ ◆ ◆
Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, concerning Central Administration, Chapter 2, concerning Sports and Events Trust Fund, Chapter 4, concerning Treasury Administration, Chapter 5, concerning Funds Management (Fiscal Affairs), and Chapter 6, concerning Investment Management. This review is being conducted in accordance with Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the September 30, 2011, issue of the *Texas Register* (34 TexReg 6515).

Relating to the review of Chapter 4, the comptroller finds that the reasons for adopting Chapter 4 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 6, the comptroller finds that the reasons for adopting Chapter 6 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 1, the comptroller finds that the reasons for adopting Chapter 1 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§1.1, 1.5, 1.28, 1.29, 1.32, 1.41, and 1.42 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 2, the comptroller finds that the reasons for adopting Chapter 2 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§2.100, 2.101, 2.102, 2.103, 2.104, 2.200, 2.201, 2.202, 2.203, and 2.204 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 5, the comptroller finds that the reasons for adopting Chapter 5 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§5.12, 5.13, 5.14, 5.15, 5.41, 5.51, 5.56, 5.140, 5.160, and 5.200 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, Chapter 2, Chapter 4, Chapter 5 and Chapter 6.

TRD-201105252
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: November 30, 2011

◆ ◆ ◆
Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), 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 129, Income Benefits--Temporary Income 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 29, 2011, issue of the *Texas Register* (36 TexReg 4817). 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 129; the chapter will be reviewed again in the future in accordance with Texas Government Code §2001.039.

TRD-201105256
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 30, 2011

◆ ◆ ◆
Texas Medical Board

Title 22, Part 9

The Texas Medical Board adopts the review of Chapter 171, Postgraduate Training Permits, §§171.1 - 171.6, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6153).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §171.6.

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 171, Postgraduate Training Permits.

TRD-201105251

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: November 30, 2011



The Texas Medical Board adopts the review of Chapter 180, Texas Physician Health Program and Rehabilitation Orders, §§180.1 - 180.4 and 180.7, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6516).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §180.4.

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 180, Texas Physician Health Program and Rehabilitation Orders.

TRD-201105250
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: November 30, 2011



The Texas Medical Board adopts the review of Chapter 190, Disciplinary Guidelines, §§190.1, 190.2, 190.8 and 190.14 - 190.16, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6516).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §190.8 and §190.14.

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 190, Disciplinary Guidelines.

TRD-201105249
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: November 30, 2011



Texas Youth Commission

Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission (TYC) files this notice of readoption for 37 TAC Chapter 81 (Interaction with the Public), Chapter 85 (Admission, Placement, Release, and Discharge), Chapter 87 (Treatment), Chapter 105 (Juvenile Correctional Officers), and Chapter 119 (Agreements with Other Agencies). The proposed review was published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5703).

No public comments were received regarding this review.

Except as noted below, TYC has determined that the reasons for adopting the rules contained in these chapters continue to exist and the rules are readopted without changes.

During the course of the review, TYC determined that §81.75, concerning Copying Costs, was no longer needed. The proposed repeal was published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5800), and the notice of adoption was published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7348).

TYC also determined that §85.85, concerning Interstate Compact for TYC Youth, was no longer needed. The proposed repeal was published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5655), and the notice of adoption was published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7169).

This concludes TYC's review of Chapters 81, 85, 87, 105, and 119.

TRD-201105254
Toysha Martin
General Counsel
Texas Youth Commission
Filed: November 30, 2011



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §83.120(a)

PRIVATE AND PUBLIC POST-SECONDARY COSMETOLOGY SCHOOLS (1500 HOURS)		
(A)	haircutting, styling and related theory	500 hours
(B)	hair coloring and related theory	200 hours
(C)	cold waving and related theory	200 hours
(D)	orientation, rules and laws	100 hours
(E)	manicuring and related theory	100 hours
(F)	shampoo and related theory	100 hours
(G)	Chemistry	75 hours
(H)	salon management and practices	75 hours
(I)	hair and scalp treatment and related theory	50 hours
(J)	chemical hair relaxing and related theory	50 hours
(K)	facials and related theory	50 hours
PUBLIC SECONDARY PROGRAMS FOR HIGH SCHOOL STUDENTS (1000 HOURS)		
(A)	haircutting, styling, and related theory	400 hours
(B)	hair coloring and related theory	150 hours
(C)	cold waving and related theory	100 hours
(D)	manicuring and related theory	100 hours
(E)	orientation, rules and laws	75 hours
(F)	shampoo and related theory	75 hours
(G)	chemical hair relaxing and related theory	50 hours
(H)	facials and related theory	25 hours
(I)	hair and scalp treatment and related theory	25 hours
CLASS A BARBER TO COSMETOLOGY OPERATOR (300 HOURS)		
(A)	Haircutting, styling and related theory	30 hours
(B)	Hair coloring and related theory	50 hours
(C)	Permanent waving including chemical hair relaxing and related theory	30 hours
(D)	Orientation, rules and laws	20 hours
(E)	Manicuring and related theory	50 hours
(F)	Shampoo and related theory	10 hours
(G)	Chemistry	20 hours
(H)	Salon management and practices	10 hours

(I)	Hair and scalp treatment and related theory	5 hours
(J)	Facials and related theory	75 hours

Figure: 16 TAC §83.120(b)

ESTHETICIAN CURRICULUM (750 HOURS)		
(A)	facial treatment, cleansing, masking, therapy	225 hours
(B)	anatomy and physiology	90 hours
(C)	electricity, machines, and related equipment	75 hours
(D)	Makeup	75 hours
(E)	orientation, rules and laws	50 hours
(F)	Chemistry	50 hours
(G)	care of client	50 hours
(H)	sanitation, safety, and first aid	40 hours
(I)	Management	35 hours
(J)	superfluous hair removal	25 hours
(K)	aroma therapy	15 hours
(L)	Nutrition	10 hours
(M)	color psychology	10 hours
MANICURE CURRICULUM (600 HOURS)		
(A)	procedures: basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products	320 hours
(B)	bacteriology, sanitation and safety: definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons	100 hours
(C)	professional practices: manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations	80 hours
(D)	arms and hands: major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases	70 hours
(E)	orientation, rules, laws and preparation	15 hours
(F)	equipment, implements and supplies	15 hours

ESTHETICIAN/MANICURE CURRICULUM (1200 HOURS)		
(A)	Orientation, rules, laws and preparation (F and M)	30 hours
(B)	Electricity, machines, related equipment, implements and supplies (F and M)	90 hours
(C)	Facial treatment, cleansing, masking, therapy (F)	215 hours
(D)	Procedures - basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products (M)	310 hours
(E)	Anatomy and physiology (F)	50 hours
(F)	Arms and hands - major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases (M)	50 hours
(G)	Makeup (F)	75 hours
(H)	Chemistry (F)	30 hours
(I)	Sanitation, safety, and first aid (F)	40 hours
(J)	Care of client (F)	50 hours
(K)	Management (F)	20 hours
(L)	Superfluous hair removal (F)	25 hours
(M)	Aroma therapy (F)	15 hours
(N)	Nutrition (F)	10 hours
(O)	Color psychology (F)	10 hours
(P)	Bacteriology, sanitation and safety - definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons (M)	100 hours
(Q)	Professional practices - manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations (M)	80 hours
EYELASH EXTENSION CURRICULUM (320 HOURS)		
(A)	Orientation, rules and law	10 hours
(B)	First aid and adverse reactions	30 hours
(C)	Sanitation and contagious diseases	30 hours
(D)	Safety and client protection	10 hours
(E)	Eyelash growth cycles and selection	30 hours

(F)	Chemistry of products	10 hours
(G)	Supplies, materials and related equipment	20 hours
(H)	Eyelash extension application	130 hours
(I)	Eyelash extension isolation and separation	30 hours
(J)	Eye shapes	10 hours
(K)	Removal of eyelash extensions	5 hours
(L)	Professional image/salon management	5 hours
HAIR BRAIDING CURRICULUM (35 HOURS)		
(A)	Hair Braiding - Technical Skills: (i) tools and equipment: types of combs, yarn, thread (ii) types and patterns of braids: twists, knots, multiple strands, corn rows, hair locking (iii) artificial hair and materials for extensions (iv) trimming of artificial hair only as applicable to the braiding process (v) braid removal and scalp care (vi) client education: maintenance	11 hours
(B)	Health and Safety/Law and Rules: (i) Texas health and safety law and rules (ii) bacteriology: sanitation, and disinfection (iii) viruses, diseases, disorders: transmission, control, Recognition (iv) Texas license requirements - individuals and salons (v) Texas professional responsibility requirements - individuals and salons (vi) Texas Occupations Code, Chapters 1602 and 1603 (laws) (vii) 16 Texas Administrative Code, Chapter 83 (rules)	16 hours
(C)	Hair Analysis and Scalp Care: (i) hair and scalp disorders and diseases: dandruff, alopecia, fungal infections, infestations, infections (ii) hair structure, composition, texture (iii) hair growth patterns, styles, textures (iv) effect of physical treatments on the hair	8 hours
HAIR WEAVING CURRICULUM (300 HOURS)		
(A)	Hair weaving: Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	150 hours
(B)	shampooing client, weft and extensions: Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	50 hours

(C)	professional practices: Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	40 hours
(D)	anatomy and physiology-scalp: major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	30 hours
(E)	chemistry in hair weaving: elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	10 hours
(F)	sanitation and safety measures: definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	10 hours
(G)	safety measures: client protection	10 hours
WIG CURRICULUM (300 HOURS)		
(A)	combing out	50 hours
(B)	Styling	50 hours
(C)	Coloring, tinting, bleaching	37 hours
(D)	Rolling	30 hours
(E)	cutting and shaping, scissors and razor	20 hours
(F)	hot iron	19 hours
(G)	Cleaning	10 hours
(H)	alterations, installation of elastic	10 hours
(I)	Conditioning	10 hours
(J)	brushing technique prior to styling	10 hours
(K)	identification and recognition definition-wigs, wiggery, wigology - pertaining to any human, synthetic, or animal hairpiece	10 hours
(L)	sanitation, disinfecting, required rules and laws	10 hours
(M)	eye tabbing	10 hours
(N)	Sizing	5 hours
(O)	Drying	5 hours
(P)	measuring head for proper size	5 hours
(Q)	preparation of wig on block	5 hours

(R)	history, background, and salesmanship	3 hours
(S)	knowledge of coloring: J L	1 hour
SHAMPOO AND CONDITIONING CURRICULUM (150 HOURS)		
(A)	procedures: Basic shampooing techniques on all types of shampoo, application and removal of all types of conditioners, removal of hair color stains; application of weekly rinses or semi-permanent rinses, removal of bleaches requiring shampoo, scalp and neck massage, removing hair tints requiring shampoo, cleansing and conditioning of all hair goods, hair and scalp analysis, and scalp and hair manipulations	100 hours
(B)	Scalp and neck, anatomy and physiology: major bones and functions; major muscles and functions, major nerves and functions, major blood vessels and functions, skin structure, functions, appendages, conditions and lesions	10 hours
(C)	chemistry of shampoo and conditioner: elements, compounds, mixtures, acid and alkali (pH), chemistry of water, composition and uses of shampoo and conditioner	10 hours
(D)	sanitation and safety: definitions, rules, laws, and methods	10 hours
(E)	shampooing and conditioning skills: purposes and effects, preparation, equipment, implements and supplies	10 hours
(F)	professional practices: shampooing as a profession, vocabulary and ethics	5 hours
(G)	salon procedures: hygiene, grooming, professional attitudes, salesmanship and public relations	5 hours

Figure: 16 TAC §83.120(c)

COSMETOLOGY INSTRUCTOR (750 HOURS)		
(A)	Lesson plans	140 hours
(B)	Methods of teaching	180 hours
(C)	Classroom management	90 hours
(D)	Evaluation techniques	90 hours
(E)	State laws and forms	60 hours
(F)	Visual aids preparation and use	60 hours
(G)	Learning theory	100 hours
(H)	Orientation, rules, and laws	30 hours
COSMETOLOGY INSTRUCTOR WITH ONE YEAR EXPERIENCE (500 HOURS)		
(A)	Lesson plans	90 hours
(B)	Methods of teaching	120 hours
(C)	Classroom management	60 hours
(D)	Evaluation techniques	60 hours
(E)	State laws and forms	40 hours
(F)	Visual aids preparation and use	40 hours
(G)	Learning theory	70 hours
(H)	Orientation, rules, and laws	20 hours

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Cancer Prevention and Research Institute of Texas

Request for Applications P-12-CPMG2 Cancer Prevention Microgrants

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose programs focusing on improving systems and removing barriers that will increase the delivery of primary preventive services for all cancers and/or screening services for breast, cervical and colorectal cancers. The purpose of this grant mechanism is to support organizations proposing innovative, evidence-based strategies in areas of the State that have populations with great need or high incidence and/or mortality rates, but lack the infrastructure to carry out prevention programs or services that are larger in scope. For Microgrants, CPRIT will consider measurable outcomes on a project-specific basis. Successful applicants are eligible for a grant award of up to \$150,000 in direct costs for up to 24 months.

A request for applications titled Cancer Prevention Microgrants is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on December 15, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on Tuesday, February 21, 2012. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201105215
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: November 28, 2011

Request for Applications P-12-EBP2 Evidence-Based Cancer Prevention Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose to deliver evidence-based services in at least one of the following cancer prevention and control areas: 1) Primary cancer prevention (e.g., vaccine-conferred immunity, healthy diet, avoidance of alcohol misuse, physical activity, sun protection); 2) Secondary prevention (e.g., screening/early detection for breast, cervical, and/or colorectal cancer); or 3) Tertiary prevention (e.g., survivorship services such as physical rehabilitation/therapy, psychosocial interventions, navigation services, palliative care). CPRIT expects measurable outcomes of supported activities. Successful applicants are eligible for a grant award of up to \$2.25 million in direct costs for up to 36 months. Applicant budget requests for funding will vary depending on the project, and it is anticipated that the majority of applicants will request significantly less than the maximum.

A request for applications titled Evidence-Based Cancer Prevention Services is available online at www.cprit.state.tx.us. Applications

will be accepted beginning at 7:00 a.m. CST on December 15, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on Tuesday, February 21, 2012. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201105216
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: November 28, 2011

Request for Applications P-12-PPE2 Health Behavior Change Through Public and Professional Education and Training

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose health care professional education and training and/or health promotion, education, and outreach for prevention, early detection, and survivorship of cancer for the public. If successful, these projects would improve the practice and performance of health care practitioners and increase the number of persons who improve their health behaviors related to the prevention of cancer, obtain recommended cancer screening tests, have cancers detected at earlier stages, and improve quality of life if they are survivors of cancer. CPRIT expects measurable outcomes of supported activities. Successful applicants are eligible for a grant award of up to \$500,000 in direct costs for up to 36 months. Applicant budget requests will vary depending on the project, and it is anticipated that the majority of projects, and projects addressing only one audience (professional or public) will request significantly less than the maximum.

A request for applications titled Health Behavior Change Through Public and Professional Education and Training is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on December 15, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on Tuesday, February 21, 2012. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201105217
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: November 28, 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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/28/11 - 12/04/11 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 11/28/11 - 12/04/11 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/11 - 12/31/11 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/11 - 12/31/11 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201105157

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 21, 2011



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, 303.008, 303.009, 304.003, and 346.111, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/05/11 - 12/11/11 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 12/05/11 - 12/11/11 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 11/01/11 - 11/30/11 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/11 - 11/30/11 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/12 - 03/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/12 - 03/31/12 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/12 - 03/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.111 Texas Finance Code¹ for the period of 01/01/12 - 03/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/12 - 03/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/12 - 03/31/12 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/12 - 03/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/11 - 12/31/11 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/11 - 12/31/11 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201105218

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 29, 2011



Employees Retirement System of Texas

Request for Application

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2013, beginning September 1, 2012 through August 31, 2013. The locations in Texas for which Applications may be made are included in the RFA. HMOs shall provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an Application to this request must meet at least the following minimum qualifications: 1) have a current Certificate of Authority from the Texas Department of Insurance; 2) have been providing managed care services in the service area for which the Application is made at least since March 1, 2011; and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the Application, adequate to provide health care to GBP Participants.

The RFA will be available on or after December 15, 2011 from ERS' website, and all applications must be received at ERS by 12:00 Noon (CT) on January 19, 2012. To access the RFA from the website, qualified HMOs shall email their request to the attention of ivendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting HMO that will permit access to the secured RFA.

General questions concerning the RFA and/or ancillary bid materials should be sent to the ivendor Mailbox where responses, if applicable, are updated frequently.

The ERS Board of Trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and financial ability. ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of ERS, the GBP, its Participants or the state of Texas.

ERS reserves the right to reject any or all Applications and call for new Applications if deemed by ERS to be in the best interests of ERS, the GBP, its Participants or the state of Texas. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP, its Participants or the state of Texas.

TRD-201105223

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: November 29, 2011



Request for Application

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Medicare Advantage ("MA") Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2013, beginning September 1, 2012 through August 31, 2013. The locations in Texas for which Applications may be made are included in the RFA. MA HMOs shall provide the level of benefits required in the RFA and meet other requirements.

An MA HMO wishing to submit an Application to this request must meet at least the following minimum qualifications: 1) have a current Certificate of Authority from the Texas Department of Insurance; 2) have been providing managed care services in the service area for which the Application is made at least since March 1, 2011; 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the Application, adequate to provide health care to GBP Participants; 4) The MA HMO shall be approved by the Centers for Medicare and Medicaid Services ("CMS") to offer Medicare Advantage plans in the state of Texas. The GBP requires that the MA HMO comply with all state and federal laws, rules and regulations affecting their conduct of business; 5) The MA HMO plan shall meet the minimum CMS requirements for the number of board-certified physicians within their network if an MA HMO plan is offered; and 6) the MA HMO plan shall provide the GBP with uniform utilization, quality assurance, claims, grievance and other data on a regular basis as required by the GBP and/or CMS requirements.

The RFA will be available on or after December 15, 2011 from ERS' website, and all applications must be received at ERS by 12:00 Noon (CT) on January 19, 2012. To access the RFA from the website, qualified MA HMOs shall email their request to the attention of ivendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the MA HMO's full legal name, street address, as well as phone and fax numbers of an immediate MA HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting HMO that will permit access to the secured RFA.

General questions concerning the RFA and/or ancillary bid materials should be sent to the ivendor Mailbox where responses, if applicable, are updated frequently.

The ERS Board of Trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to

service contracts, past experience, and financial ability. ERS reserves the right to select none, one, or more than one MA HMO per service area when it is determined that such action would be in the best interest of ERS, the GBP, its Participants or the state of Texas.

ERS reserves the right to reject any or all Applications and call for new Applications if deemed by ERS to be in the best interests of ERS, the GBP, its Participants or the state of Texas. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP, its Participants or the state of Texas.

TRD-201105224

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: November 29, 2011



Texas Board of Professional Engineers

Criminal History Policy for Applications

Pursuant to Chapter 53, Texas Occupations Code relating to consequences for Criminal Convictions, The Texas Board of Professional Engineers has filed the following policies regarding criminal incidents for applicants and licensees with the Secretary of State:

Policy Determination:

On the application form, all applicants will be asked to state, under penalty of perjury, whether he or she has ever been convicted of an offense, placed on probation, granted deferred adjudication or any type of pretrial diversion for a felony or misdemeanor crime. If so, the applicant will be asked to supply additional information about each criminal incident using the Criminal History form as well as providing copies of appropriate court documents. Board staff will submit identifying information to the Texas Department of Public Safety or other appropriate agencies requesting criminal records on applicants for licensure.

Applicants with a criminal history will be referred to the Licensing Committee for review and approval if any of the following conditions apply:

Any direct relationship of the judgment to the applicant's fitness to practice as a Professional Engineer in Texas.

Any misdemeanor judgment for which the date of completion and resolution of the terms is within five years of the date of application.

Multiple misdemeanor judgments that occurred more than 5, but within 10 years of the date of application.

Any felony judgment for which the date of completion and resolution of the terms is within 10 years of the date of application.

Applications with reported or discovered criminal incidents not meeting the conditions above will be reviewed under the normal application processing procedures by the Executive Director (staff).

Background and reason(s) for policy interpretation:

Pursuant to Texas Occupations Code, Chapter 53 relating to Consequences of Criminal Convictions, The Texas Board of Professional En-

engineers establishes the following guidelines for consideration for licensure as a Professional Engineer in Texas. The board shall consider:

The nature and seriousness of the crime;

The relationship of the crime to the board's statutory responsibility to ensure that a person practicing as a Professional Engineer in Texas protects the health, safety, and welfare of the public;

The relationship of the crime to the competence, ability, capacity, fitness or professional judgment required to perform the duties and discharge the responsibilities of an engineer;

The outcome or resolution of criminal charges and any associated judgment, deferral of judgment, penalty or punishment, whether completed or ongoing;

The date of completion and resolution of the terms of any judgment, deferral of judgment, penalty or punishment;

The extent to which issuance of a license will allow a person to engage in further criminal activity of the same type as that which the applicant previously had been involved.

In addition to the factors stated above, the board shall consider §53.023 (Texas Occupations Code) in determining the present fitness of a candidate who has been convicted of a crime.

The Texas Board of Professional Engineers considers that the following crimes directly relate to the practice of engineering due to the adverse impact each of these crimes has on the special trust and ethical duties a Professional Engineer owes to the client and the public involving honesty, integrity, fidelity and the exercise of good judgment and character:

Any felony or misdemeanor which involves a disregard for the health, safety or welfare of the general public or individuals, including violent crimes or driving under the influence of alcohol or drugs;

Any felony or misdemeanor of which fraud or deceit is an essential element;

Any felony or misdemeanor which demonstrates a lack of professional judgment expected of a Professional Engineer, including crimes involving drugs or alcohol;

Any felony or misdemeanor involving financial or other loss for a client(s) or the public; and

Any other felony or misdemeanor reflecting adversely upon the applicant's fitness to practice engineering.

TRD-201105247

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Filed: November 30, 2011



Criminal History Policy for Licensees

Pursuant to Chapter 53, Texas Occupations Code relating to consequences for Criminal Convictions, The Texas Board of Professional Engineers has filed the following policies regarding criminal incidents for applicants and licensees with the Secretary of State:

Policy Determination:

Under Board rule 22 TAC §137.5 (relating to Notification of Name Change, Address Change, Employment Change, and Criminal Convictions), licensees are required to notify the Board of any misdemeanor or felony convictions within 30 days of the action. In addition, at the time of annual renewal, all licensed engineers will be asked to state whether

he or she has, since the last renewal, been convicted of an offense for a felony or misdemeanor. The board may also, at its discretion, submit identifying information to the Texas Department of Public Safety and or other appropriate agencies requesting records for a licensee. All reported convictions will be documented in the licensee's board record and referred to the Compliance and Enforcement division for review.

Board rule 22 TAC §139.43 (relating to License Holder with Criminal Convictions) states that upon review of the reported criminal convictions, the Board may take any of the standard enforcement actions. Any felony convictions which result in incarceration will require revocation of the license.

Reported convictions meeting all of the following conditions may be handled by the Executive Director and staff (Compliance and Enforcement Division) without referral to the board:

Minimal or no relationship of the crime to the person's ability to practice as a Professional Engineer in Texas;

The conviction was a single occurrence during the previous year;

The conviction was of misdemeanor level, not felony;

There was no incarceration associated;

Licensees with reported convictions not meeting the conditions above will be referred to the Compliance and Enforcement division for consideration of possible disciplinary action via a formal investigative case.

Background and reason(s) for policy interpretation:

Pursuant to Texas Occupations Code Chapter 53 relating to Consequences of Criminal Convictions, The Texas Board of Professional Engineers establishes the following guidelines for consideration for licensure as a Professional Engineer in Texas.

The board shall consider:

The nature and seriousness of the crime;

The relationship of the crime to the board's statutory responsibility to ensure that a person practicing as a Professional Engineer in Texas protects the health, safety, and welfare of the public;

The relationship of the crime to the competence, ability, capacity, fitness or professional judgment required to perform the duties and discharge the responsibilities of an engineer;

The outcome or resolution of the judgment, deferral of judgment, penalty or punishment, whether completed or ongoing;

The date of completion and resolution of the terms of any judgment, penalty or punishment;

The extent to which renewal of a license will allow a person to engage in further criminal activity of the same type as that which the applicant previously had been involved. In addition to the factors stated above, the board shall consider §53.023 (Texas Occupations Code) in determining the present fitness of a licensee who has been convicted of a crime.

The Texas Board of Professional Engineers considers that the following crimes directly relate to the practice of engineering due to the adverse impact each of these crimes has on the special trust and ethical duties a Professional Engineer owes to the client and the public involving honesty, integrity, fidelity and the exercise of good judgment and character:

Any felony or misdemeanor which involves a disregard for the health, safety or welfare of the general public or individuals, which may include violent crimes or driving under the influence of alcohol or drugs;

Any felony or misdemeanor of which fraud or deceit is an essential element;

Any felony or misdemeanor which demonstrates a lack of professional judgment expected of a Professional Engineer, which may include crimes involving drugs or alcohol;

Any felony or misdemeanor involving financial or other loss for a client(s) or the public; and

Any other felony or misdemeanor judgment reflecting adversely upon the licensee's fitness to practice engineering.

TRD-201105248

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Filed: November 30, 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 January 9, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 9, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: APPLETREE, INCORPORATED dba Mr. D's Number 2; DOCKET NUMBER: 2011-1386-PST-E; IDENTIFIER: RN102049863; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(ii)(I) 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: \$3,880; ENFORCEMENT COORDINATOR: Michaëlle Sherlock, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Boling Municipal Water District; DOCKET NUMBER: 2011-1422-MWD-E; IDENTIFIER: RN102806056; LOCATION: Boling, Wharton County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1) and §319.5(f), and Texas Pollutant Discharge Elimination System Permit Number WQ0010843001, Definitions and Standard Permit Conditions Number 2(e), by failing to correctly calculate the daily average concentration for *escherichia coli* bacteria; and 30 TAC §317.7(e), by failing to properly secure the wastewater treatment plant; PENALTY: \$2,520; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: BORDER STOP, INCORPORATED; DOCKET NUMBER: 2011-0872-PST-E; IDENTIFIER: RN101759348; 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 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 also by failing to provide release detection for the piping associated with the UST system; PENALTY: \$2,379; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BRIARGROVE, LLC dba Fountainview Mobile Car Care; DOCKET NUMBER: 2011-0881-PST-E; IDENTIFIER: RN100531755; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued 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; and 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 per month (not to exceed 35 days between each monitoring); PENALTY: \$9,699; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: CDK INVESTMENTS, INCORPORATED dba Mr. D's Diamond Shamrock 1; DOCKET NUMBER: 2011-1495-PST-E; IDENTIFIER: RN101443539; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: CELANESE LTD.; DOCKET NUMBER: 2011-1501-AIR-E; IDENTIFIER: RN100258060; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 4449, Special Conditions Number 1, Federal Operating Permit (FOP) Number 1628, Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(H) and §122.143(4), FOP Number 1628, STC Number 2, and THSC, §382.085(b), by failing to include in the final report the authorization number and the correct authorization limit;

PENALTY: \$10,139; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Ballinger; DOCKET NUMBER: 2011-1671-PWS-E; IDENTIFIER: RN101409928; LOCATION: Ballinger, Runnels County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine throughout the distribution system at all times; PENALTY: \$368; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Houston; DOCKET NUMBER: 2011-1394-PST-E; IDENTIFIER: RN102389376; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling station; RULE VIOLATED: 30 TAC §115.242(3) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system; PENALTY: \$900; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Mexia; DOCKET NUMBER: 2011-1644-MWD-E; IDENTIFIER: RN101918076; LOCATION: Mexia, Limestone County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010222001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$15,900; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2011-1328-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refining and natural gas processing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Texas Health and Safety Code, §382.085(b), and Flexible Permit Numbers 9868A and PSDTX1027M7, Special Conditions Number 1, by failing to prevent unauthorized emissions during emission events that occurred on March 19, 2011 (Incident Number 152189) and on March 24, 2011 (Incident Number 152427). Since the emissions events could have been avoided by better operational and maintenance practices, it is not subject to the affirmative defense under 30 TAC §101.222; PENALTY: \$19,750; Supplemental Environmental Project offset amount of \$7,900 applied to Texas Parent Teacher Association - Texas Parent Teacher Association Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2011-1316-AIR-E; IDENTIFIER: RN102984911; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(2)(B) and (b)(1)(H) and §122.143(4), Federal Operating Permit (FOP) Number 3369, Special Terms and Conditions (STC) Number 2G and Texas Health and Safety Code (THSC), §382.085(b), by failing to provide the correct Regulated Entity Reference Number on the initial notification and on the final report for Emissions Event Incident Number 150319, which occurred on February 5, 2011; 30

TAC §106.492 and §122.143(4), FOP Number 3369, STC Numbers 9 and 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §106.371 and §122.143(4), FOP Number 3369, STC Number 10 and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and §122.143(4), FOP Number 3369, STC Number 2 and THSC, §382.085(b), by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery and also by failing to provide sufficient information on the root cause so the avoidability of the incident could not be determined; PENALTY: \$10,569; Supplemental Environmental Project offset amount of \$4,228 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: First Baptist Church of Jonestown, Texas; DOCKET NUMBER: 2011-0765-PWS-E; IDENTIFIER: RN105518724; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform and by failing to provide public notice of the exceedences; and 30 TAC §290.110(e)(4)(A), by failing to submit to the executive director by the tenth day of the month following each quarter a disinfectant level quarterly operating report; PENALTY: \$2,610; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(13) COMPANY: Johnny C. Brewer, Jr. dba Brewers Exxon; DOCKET NUMBER: 2011-1656-PST-E; IDENTIFIER: RN101672459; LOCATION: Caldwell, Burleson 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 the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the USTs; PENALTY: \$2,379; ENFORCEMENT COORDINATOR: Kimberly Walker, (512) 239-2596; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: KING FUELS, INCORPORATED dba Noorans Diamond; DOCKET NUMBER: 2011-1456-PST-E; IDENTIFIER: RN102846219; 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 per month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Kohinoor Business, Incorporated dba Chevron Food Mart; DOCKET NUMBER: 2011-1375-PST-E; IDENTIFIER: RN103123964; LOCATION: Florence, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: \$5,129; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: KOLDER, INCORPORATED dba Numo Manufacturing; DOCKET NUMBER: 2011-1118-IHW-E; IDENTIFIER:

RN106111404; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: screen and decal printing business; RULE VIOLATED: 30 TAC §§335.62, 335.503 and 335.513 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; 30 TAC §335.9, by failing to keep records of hazardous and industrial solid waste activities; and 30 TAC §335.241 and 40 CFR §266.70, by failing to keep records of recyclable materials utilized for precious metal recovery; PENALTY: \$20,940; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Mages Group, LLC; DOCKET NUMBER: 2011-1516-WQ-E; IDENTIFIER: RN106045875; LOCATION: Chireno, Nagodoches County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of sediment into or adjacent to any water in the state; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: MAHEK & MALIKA, Incorporated dba W & W Grocery; DOCKET NUMBER: 2011-1365-PST-E; IDENTIFIER: RN101539047; LOCATION: Hutchins, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Marcia Alonso, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: MOOSA INCORPORATED LLC dba GM Shell; DOCKET NUMBER: 2011-1050-PST-E; IDENTIFIER: RN101841278; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued 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; and 30 TAC §334.48 and TWC, §26.3475(a), by failing to ensure that the UST system was operated, maintained, and managed in a manner that will prevent releases of regulated substances; PENALTY: \$12,705; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Motorola Northwest Property Owners, Incorporated; DOCKET NUMBER: 2011-1532-EAQ-E; IDENTIFIER: RN103065322; LOCATION: Austin, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(g) and Edwards Aquifer Protection Plan (EAPP) 11-99092804, Standard Condition (SC) Number 2, by failing to submit proof of deed recordation to the TCEQ within 60 days of the approval date, November 19, 1999, of the EAPP; 30 TAC §213.4(j) and EAPP 11-99092804, SC Number 4, by failing to obtain approval of a modification to an approved EAPP prior to constructing the modification; 30 TAC §213.4(a)(1), by failing to obtain approval of an aboveground storage tank facility plan before commencing construction; 30 TAC §213.5(c)(3)(D) and EAPP 11-98070204, SC Number 8, by failing to test the organized sewage collection system prior to the use of the new sewer lines and manholes; 30 TAC §213.5(b)(5)(B) and EAPP 11-99092804, SC Number 17, by failing to submit a copy of the

transfer of responsibility form to the TCEQ within 30 days of the transfer of ownership of the property; and 30 TAC §213.4(k) and EAPP 11-99092804, SC Number 17, by failing to ensure that inspections and maintenance of permanent best management practices were performed after construction; PENALTY: \$16,125; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(21) COMPANY: Navasota Independent School District; DOCKET NUMBER: 2011-1662-PST-E; IDENTIFIER: RN101672582; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to 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; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Ralph West dba Precision Irrigation Systems; DOCKET NUMBER: 2011-1710-LII-E; IDENTIFIER: RN105381149; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2), by failing to comply with local regulations and by failing to obtain a permit required to install an irrigation system; PENALTY: \$188; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: RIO GRANDE VALLEY SUGAR GROWERS, INCORPORATED; DOCKET NUMBER: 2011-1785-AIR-E; IDENTIFIER: RN100825405; LOCATION: Santa Rosa, Hidalgo County; TYPE OF FACILITY: sugar cane processing mill; RULE VIOLATED: Federal Operating Permit (FOP) Number O995, General Terms and Conditions, 30 TAC §122.143(4) and §122.145(2)(B), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit semi-annual deviation reports for the May 9, 2010 - November 8, 2010 and November 9, 2010 - May 8, 2011 reporting periods; and FOP Number O995, Special Terms and Conditions Number 7, New Source Review Permit Numbers 114 and PSDTX1024, Special Conditions Number 7, 30 TAC §§116.115(c), 116.116(b)(1)(c), and 122.143(4), and THSC, §382.085(b), by failing to comply with the bagasse consumption limit for Boiler Numbers 2 and 4; PENALTY: \$14,900; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: RIVER BEND WATER SERVICES, INCORPORATED; DOCKET NUMBER: 2011-1409-PWS-E; IDENTIFIER: RN102681467; LOCATION: Matagorda, Matagorda County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for trihalomethanes, based on the running annual average; PENALTY: \$422; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: S.S.G. FUEL SERVICE, INCORPORATED dba King Shell; DOCKET NUMBER: 2011-1026-PST-E; IDENTIFIER: RN101268472; 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: \$6,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Silverlake Church; DOCKET NUMBER: 2011-1263-PWS-E; IDENTIFIER: RN101244986; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a disinfectant level quarterly operating report to the executive director each quarter by the tenth day of the month following the end of each quarter; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: \$2,835; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: STEPHENVILLE MOBILE HOME PARK, LTD.; DOCKET NUMBER: 2011-1677-MWD-E; IDENTIFIER: RN102183027; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013966001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$3,380; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Tom Durant dba Classic Clean Fuels; DOCKET NUMBER: 2011-1485-PST-E; IDENTIFIER: RN103964797; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to 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 UST; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST; PENALTY: \$4,129; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: United States Department of the Army; DOCKET NUMBER: 2011-1352-AIR-E; IDENTIFIER: RN102843570; LOCATION: Fort Bliss, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and Texas Health and Safety Code, §382.085(b), by failing to comply with the 7.0 pounds per square inch absolute maximum Reid Vapor Pressure requirement for gasoline transferred during the control period of June 1, 2011 - September 16, 2011, in El Paso County; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 401

East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (432) 570-1359.

(30) COMPANY: West End Auto Works, Incorporated; DOCKET NUMBER: 2011-1246-PST-E; IDENTIFIER: RN102445798; LOCATION: Houston, Harris County; TYPE OF FACILITY: auto mechanic shop; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to update the registration for any change or additional information regarding the underground storage tank (UST) within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; and 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$7,833; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201105221

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2011



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 9, 2012**. TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 9, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: C.M. Stanley, Jr.; DOCKET NUMBER: 2008-0219-PST-E; TCEQ ID NUMBER: RN101903060; LOCATION: the intersection of South Stanley Road and Farm-to-Market Road 2963, Longview, Gregg County; TYPE OF FACILITY: underground storage tank (UST) system and a former convenience store; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: \$3,675; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of Kosse; DOCKET NUMBER: 2008-1629-MWD-E; TCEQ ID NUMBER: RN101919702; LOCATION: approximately 150 feet southeast of the intersection of Jackson Street and Tulip Street, Kosse, Limestone County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11405001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2007; and TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number 11405001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permit effluent limits; PENALTY: \$43,250; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: FIFA INCORPORATED dba Rufe Snow Texaco; DOCKET NUMBER: 2011-0267-PST-E; TCEQ ID NUMBER: RN104091723; LOCATION: 6700 Rufe Snow Drive, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,925; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: NEW CANEY ENTERPRISE, INCORPORATED dba Bills 3 Gs Food Mart; DOCKET NUMBER: 2011-0914-PST-E; TCEQ ID NUMBER: RN101879716; LOCATION: 23550 Farm-to-Market Road 1485, New Caney, Montgomery County; TYPE OF FACILITY: underground storage tank system and convenience store; RULES VIOLATED: 30 TAC §115.246(4) and Texas Health and Safety Code (THSC) §382.085(b), by failing to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel; 30 TAC §115.245(2) and THSC §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(3)(L) and THSC §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; PENALTY: \$3,952; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Peach Creek Dam & Lake Club; DOCKET NUMBER: 2010-1807-PWS-E; TCEQ ID NUMBER: RN101193027;

LOCATION: 17370 South Lakeview Drive, Houston, Montgomery County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and THSC §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) 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 §290.110(c)(4)(A) and (d)(1)(C), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days using an approved test kit; 30 TAC §290.110(e)(4), by failing to submit a Disinfectant Level Quarterly Operating Report to the commission each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence to protect the PWS's well and pressure tank sites; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system so that valves and mains may be easily located during emergencies; 30 TAC §290.46(e)(4)(A) and THSC §341.033(a), by failing to operate the PWS under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the PWS's pressure tank; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number 2; 30 TAC §290.43(d)(3), by failing to provide the pressure tanks with a device to readily determine air-water-volume; 30 TAC §290.121(a) and (b), by failing to develop and maintain and make available for commission review an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the PWS will use to comply with the monitoring requirements; and 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data; PENALTY: \$8,449; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: S.R.R. INVESTMENTS, INCORPORATED dba Elroy Country Corner; DOCKET NUMBER: 2011-1011-PST-E; TCEQ ID NUMBER: RN101488880; LOCATION: 13912 Farm-to-Market Road 812, Del Valle, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: \$5,000; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(7) COMPANY: Scyene Mobil, L.L.C. dba Scyene Mobil; DOCKET NUMBER: 2011-0269-PST-E; TCEQ ID NUMBER: RN101443000; LOCATION: 1711 West Scyene Road, Mesquite, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: THSC §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and TWC §26.3475(a) and 30 TAC §334.50(b)(2) and (2)(A)(i)(III), by failing to provide release detection for the piping associated with the USTs and by failing to test the line leak detectors

at least once per year for performance and operational reliability; PENALTY: \$5,410; STAFF ATTORNEY: Stephanie Frazier, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: WEST YUKON ESTATES LLC; DOCKET NUMBER: 2011-0695-UTL-E; TCEQ ID NUMBER: RN102682192; LOCATION: 2719 3rd Street, Huffman, Harris County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and (j), and TWC §13.1395(b)(2), by failing to submit to the TCEQ executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the PWS's ability to provide emergency operations; and 30 TAC §290.51(a)(3), §290.21(a), and TWC §5.702, by failing to pay all annual and late Public Health Service and Consolidated Water Quality fees for TCEQ Financial Administration Accounts Numbers 91011828 and 23003525 for Fiscal Year 2011; PENALTY: \$450; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Westex Capital, LTD.; DOCKET NUMBER: 2010-1491-WQ-E; TCEQ ID NUMBER: RN102785805; LOCATION: 303 Ebner Street, Boerne, Kendall County; TYPE OF FACILITY: wholesale business; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and Agreed Order Docket Number 2007-0910-WQ-E, Ordering Provision Number 2.a., by failing to obtain authorization to discharge storm water associated with industrial activities under TPDES Multi-Sector General Permit Number TX050000 and by failing to develop and implement a Storm Water Pollution Prevention Plan; PENALTY: \$14,520; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201105233

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2011



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 9, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, im-

proper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 9, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Elsa; DOCKET NUMBER: 2011-0564-MWD-E; TCEQ ID NUMBER: RN101610251; LOCATION: approximately 0.5 miles southwest of the intersection of Farm-to-Market Road 1925 and State Highway 88, Hidalgo County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17), §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011510002, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0011510002, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0011510002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,725; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201105231

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2011



Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed

technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 9, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 9, 2012**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Longhorn Horizon, Incorporated dba Star One; DOCKET NUMBER: 2011-0478-PST-E; TCEQ ID NUMBER: RN102790839; LOCATION: 2004 West Farm-to-Market Road 917, Joshua, Johnson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: M & K PANTRY, LLC (fka M & K PANTRY, L.C.) dba M & K PANTRY 4; DOCKET NUMBER: 2011-0638-PST-E; TCEQ ID NUMBER: RN102444890; LOCATION: 210 Highway 96 South, Silsbee, Hardin County; TYPE OF FACILITY: UST system and a grocery store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d), 30 TAC §334.49(a), and TCEQ Agreed Order Docket Number 2004-0675-PST-E, Ordering Provision Number 3.c., by failing to provide proper corrosion protection for the UST system; PENALTY: \$28,125; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201105232

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2011



Notice of Receipt of Application and Intent to Obtain a
Municipal Solid Waste Permit Amendment

Permit No. 53a

APPLICATION. North Texas Municipal Water District (Lookout Drive Transfer Station), P.O. Box 2408, Wylie, Collin County, Texas 75098, a transfer station, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Solid Waste Permit Amendment to authorize the construction of a new transfer station building that will replace the existing building. The facility is located at 1601 E. Lookout Drive, Richardson, Collin County, Texas 75082. The TCEQ received the application on October 26, 2011. The permit application is available for viewing and copying at North Texas Municipal Water District's offices at 505 East Brown Street, Wylie, Collin County, Texas 75098 and at Richardson City Hall, 411 W. Arapaho Road, Richardson, Dallas County, Texas 75083. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.985&lng=-96.6925&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the Commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from North Texas Municipal Water District at the address stated above or by calling Jeffrey D. Mayfield, Solid Waste System Manager at (972) 442-5405.

TRD-201105262

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: November 30, 2011



Notice of Water Quality Applications

The following notices were issued on November 18, 2011 through November 23, 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

TOTAL PETROCHEMICALS USA INC which operates the Port Arthur Refinery, a petroleum refinery which includes marine cargo handling, petroleum bulk stations and terminals, and which also receives and treats OCPSF wastewater from the adjacent BASF Fina Petrochemicals Limited Partnership NAFTA Region Olefins Complex, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000491000 to increase the daily average permitted flow at Outfall 001 from 5,000,000 gallons per day to 6,800,000 gallons per day; and increase the effluent limitations at Outfall 001 based on the increase of the daily average permitted flow and the expansion of production facilities. The current permit authorizes the discharge of petroleum refining and OCPSF process wastewater, storm water and utility wastewater via Outfall

001 at a daily average flow not to exceed 5,000,000 gallons per day; the intermittent, flow variable discharge of storm water via Outfalls 002, 003, and 004; and wastewater from the raw water clarification sludge lagoon on an intermittent, flow variable basis via Outfall 005. The facility is located at the northwest corner of State Highway 87 and Farm-to-Market Road 366, northeast of the City of Groves, Jefferson County, Texas 77642. The Texas Commission on Environmental Quality (TCEQ) Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

LUMINANT GENERATION COMPANY LLC which operates the Lake Hubbard Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0001245000, which authorizes the discharge of once through cooling water, auxiliary cooling water and previously monitored effluents (low volume wastewater, metal cleaning waste, and storm water (from diked oil storage areas, yard and storm drains)) at a daily average flow not to exceed 870,000,000 gallons per day via Outfall 001. The facility is located at 555 Barnes Bridge Road, on the west shore of Lake Ray Hubbard, approximately 1.5 miles south of Interstate Highway 30 in the City of Sunnyvale, Dallas County, Texas 75182.

COOK COMPOSITES AND POLYMERS CO AND TOTAL COMPOSITES INC AND TOTAL COMPOSITES TWO INC a resin manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0002073000, which authorizes the discharge of noncontact cooling water, boiler blowdown, and stormwater at a daily average flow not to exceed 110,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located 4.0 miles east of the City of Marshall, 1.0 mile northeast of the intersection of State Highway 80 and Farm to Market Road 1998, on the north side of Farm to Market Road 1998, in Harrison County, Texas.

KINDER MORGAN PETCOKE LP 2 Northpoint Drive, Suite 950, Houston, Texas 77060, which operates the Penn City Terminal, has applied to the TCEQ for a major amendment with renewal to TPDES Permit No. WQ0003244000 to authorize the addition of Outfall 002 for the discharge of wash water, storm water, and dust suppression water on an intermittent and flow variable basis and to remove the effluent flow limit from Outfall 001. The current permit authorizes the discharge of dust suppression water and storm water at a total volume discharge during any 24-hour period not to exceed 3,800,000 gallons per day via Outfall 001. The facility is located at 3100 Penn City Road, approximately one mile south of the intersection of Penn City Road and Interstate Highway 10, Harris County, Texas 77015. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

HANSON PRESSURE PIPE INC which operates Grand Prairie Pressure Pipe, a concrete pressure pipe and products manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003446000, which authorizes the discharge of process wastewater, boiler blowdown, hydrostatic test water, and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located at 1004 North MacArthur Boulevard, at the northeast quadrant of the intersection of Interstate Highway 30 and North MacArthur Boulevard in the City of Grand Prairie, Dallas County, Texas 75050.

KINDER MORGAN PETCOKE LP which operates the Deepwater Terminal, a bulk material storage and handling facility, has ap-

plied for a renewal with a major amendment to TPDES Permit No. WQ0004301000 to authorize facility will be adding an impoundment to provide additional holding capacity for storm water associated with coal storage to discharge via Outfall 001. The current permit authorizes the discharge of process wastewater and storm water on an intermittent and flow variable basis via Outfall 001. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The facility is located at 4207 Pasadena Freeway, just south of the Houston Ship Channel, and approximately 1.0 mile northeast of the intersection of East Beltway and State Highway 225, in the City of Pasadena, Harris County, Texas 77503.

WHITE OAK BEND MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011979002, 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 at 10200 Autumn Meadow Lane, approximately 1.25 miles south of Farm-to-Market Road 1960 and 0.35 mile east of Jones Road, in Harris County, Texas 77064.

WALNUT COVE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0012416001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located 200 feet east of Lake Conroe on Weir Creek, approximately 3 miles west of Interstate Highway 45 and 2 miles north of Farm-to-Market Road 1097 in Montgomery County, Texas 77378.

SPRING CENTER INC has applied for a renewal of TPDES Permit No. WQ0012637001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 22820 Interstate Highway 45 North, approximately 1.5 miles north of the City of Spring, in Harris County, Texas 77373.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 286 has applied for a renewal of TPDES Permit No. WQ0013020001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4,500 feet west of the crossing of Farm-to-Market Road 249 over Cypress Creek in Harris County, Texas 77070.

CITY OF COLDSRING has applied for a renewal of TPDES Permit No. WQ0013291001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1,500 feet south of the intersection of State Highway 150 and Farm-to-Market Road 2973 and approximately 2,600 feet west of the intersection of State Highway 150 and Farm-to-Market Road 222 in San Jacinto County, Texas 77331.

SPRING CYPRESS WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013711001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 1442 Spring Cypress Road, approximately 600 feet northeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 2920 (Spring Cypress Road) in Harris County, Texas 77373.

W INDUSTRIES LIMITED LP has applied for a renewal of TCEQ Permit No. WQ0014250001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 900 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 11500 Charles Road, approximately 3,000 feet northwest of the intersection of Farm-to-Market Road 529

(Jersey Road) and U.S. Highway 290; northwest of Houston within the ETJ of Jersey Village in Harris County, Texas 77041.

H M W SPECIAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014266001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 51,000 gallons per day. The facility is located at 26900 Rhode Island, approximately 1-1/2 miles southwest of the intersection of State Highway 249 and Decker Prairie-Rose Hill Road in Montgomery County, Texas 77355.

TRAVIS LYNN BISHOP has applied for a renewal of TPDES Permit No. WQ0014388001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 115,000 gallons per day. The facility is located 3.5 miles west of Interstate Highway 45 along Longstreet Road, 200 feet north of Longstreet Road and 150 feet west of Enchanted Waters Drive, Montgomery County, Texas 77378.

CITY OF ORE CITY has applied for a renewal of TPDES Permit No. WQ0014389001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 218,000 gallons per day. The facility is located at 400 ML King Street, approximately 4,300 feet northeast of the intersection of U. S. Highway 259 and Farm-to-Market Road 450 in Upshur County, Texas 75683.

CITY OF HAWK COVE has applied for a renewal of TPDES Permit No. WQ0014522001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 9543 Morris Drive, 3,600 feet southeast of the intersection of County Road 3613 and County Road 3608 in Hunt County, Texas 75474.

CITY OF EUSTACE has applied for a renewal of TPDES Permit No. WQ0014789001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located at 113 Davis Street, approximately 800 feet east of the intersection of Cornelius Lane and Smith Street, southeast of midtown Eustace in Henderson County, Texas 75124.

CITY OF PALMER has applied for a renewal of TPDES Permit No. WQ0014795001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 226,000 gallons per day. The facility is located approximately 0.40 mile south and 0.10 mile west of the intersection of Farm-to-Market Road 813 and Interstate Highway 45, in the City of Palmer in Ellis County, Texas 75152.

VAM USA LLC has applied for a major amendment to TPDES Permit No. WQ0004841000 (EPA I.D. No. TX0129917) to authorize the removal of all waste streams with the exception of treated domestic wastewater, which converts the permit to Municipal Wastewater Permit No. WQ0015008001 (EPA I.D. No. TX0129917) and a decrease in the discharge of treated industrial and domestic wastewater from a daily average flow not to exceed 20,000 gallons per day to a daily average flow of domestic wastewater not to exceed 5,000 gallons per day. The facility is located at 16031 Miller Road 1, one mile southwest of the intersection of US 90 and Sheldon Road, in Houston in Harris County, Texas 77049.

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 above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of TPDES Permit No. WQ0001353000 issued to Diamond Shamrock Refining Company, L.P., which operates a petroleum refinery, to add Whole Effluent Toxicity (WET) limitations to Outfall 001. The existing permit authorizes the discharge of treated process wastewater, utility wastewater

(cooling tower blowdown, boiler blowdown, reverse osmosis reject, etc.) miscellaneous waste streams (air pollution control wastewater, deep well backflush, etc.), storm water, and remediated ground water via Outfall 001 at a daily average flow not to exceed 1.5 million gallons per day; the intermittent flow variable discharge of storm water runoff, hydrostatic test water, fire water runoff and plant washwater via Outfall 002; and the application of wastewater [including, but not limited to, wastewater (treated, partially treated, and untreated), supplements (fertilizers, maintenance chemicals, pesticides, treatment chemicals, etc.), off-spec product, and any other materials and/or substances] applied to the irrigation tract sized at 1438 acres. The facility is located at 301 Leroy Street in the City of Three Rivers, Live Oak County, Texas 78071; with an irrigation (disposal) site located adjacent to the southwest side of Interstate Highway 37, approximately one mile northwest of the intersection of Interstate Highway 37 and State Highway 72, north of the City of Three Rivers, Live Oak County, Texas 78071.

CITY OF RUNAWAY BAY has applied for a minor amendment to the TPDES Permit No. WQ0010862001 to authorize changing the sample type for minimum Self-Monitoring Requirements from 24-Hr. Composite to Composite according to 30 TAC Chapter 319. The existing permit 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 2,000 feet north of U.S. Highway 380 and approximately 7,000 feet southwest of the point where U.S. Highway 380 crosses Lake Bridgeport in Wise County, Texas 76426.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201105261

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 30, 2011

Texas Facilities Commission

Request for Proposals #303-3-20315

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-3-20315. TFC seeks a five or ten year lease of approximately 7,081 square feet of office space in Tarrant County, Texas.

The deadline for questions is December 22, 2011 and the deadline for proposals is January 4, 2012 at 3:00 p.m. The award date is February 15, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=97914.

TRD-201105260

Kay Molina

General Counsel

Texas Facilities Commission

Filed: November 30, 2011

General Land Office

Request for Public Comments on the Rollover Pass Determination

Notice is hereby given that the Commissioner of the Texas General Land Office has determined that Rollover Pass, located on Bolivar Peninsula in Galveston County, contributes to significant erosion to the adjacent shoreline. Such determination is authorized by Texas Natural Resources Code §33.613(a)(1) and is a prerequisite to the modification or closure of the Pass. The Commissioner will undertake the closure of Rollover Pass, which is not a public navigational channel constructed or maintained by the federal government, using funds appropriated for this purpose by the legislature, as well as other funds as available. Texas Natural Resources Code §33.613(a).

The Commissioner invites public comment on the proposed plan to replace the loss of public recreational opportunities that result from the closure of Rollover Pass, as required by Texas Natural Resources Code §33.613(b). This plan was developed in consultation with Texas Parks and Wildlife Department, Galveston County and local stakeholders. The Commissioner has assessed the feasibility of installing fishing piers, boat ramps, and other facilities that provide recreational opportunities. The Commissioner concluded that a concrete fishing pier on the Gulf side is the most appropriate and feasible project to replace recreational fishing opportunities.

The Rollover Pass Recreational Amenities Plan ("Plan") can be viewed at: www.glo.texas.gov/coastal. The Texas General Land Office will take public comments on the Plan for a thirty-day period following the date of this notice's publication in the *Texas Register*. The Commissioner will consider all comments timely received in finalizing the Plan. Any comments or questions should be directed to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, phone number (512) 475-1859, facsimile number (512) 463-6311, or email to walter.talley@glo.texas.gov. Written comments must be received no later than thirty (30) days from the publication of this notice in the *Texas Register*.

TRD-201105257

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: November 30, 2011

Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the renewal of contract #529-10-0021-00001 with **Software Contract Solutions, Inc. (SCS)** an entity with a principal place of business at 4731 Hillcrest Avenue, Fair Oaks, California 95628. The contractor will continue to provide negotiation support services on an as needed basis, which will provide a resource for investigating all facets of information technology (IT) software issues that impact price, cost savings measures, risk exposure and overall total cost of ownership.

The value of the renewal of the contract with SCS will not exceed \$950,000. The total value of the contract will not exceed \$2,850,000. The contract was initially executed on October 30, 2009 and will expire on October 31, 2012, unless terminated sooner by the parties. In response to queries from HHSC, SCS will access its proprietary database to provide information to HHSC concerning proposals in software negotiations. SCS will provide information in the form of business-oriented analyses, in-depth knowledge of licensing trends; maintenance rates and pricing; and changing technologies and their impact on the IT industry.

TRD-201105186

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 23, 2011

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	IRISNDT Matrix Corporation	L06435	Houston	00	11/10/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Azle	Texas Health Harris Methodist Hospital Azle	L03230	Azle	31	11/04/11
Beaumont	Christus Health Southeast Texas dba Christus Hospital - St. Elizabeth	L00269	Beaumont	112	11/04/11
Beaumont	Cray Valley U.S.A., L.L.C.	L05937	Beaumont	05	10/31/11
Benbrook	Weatherford International, Inc.	L04286	Benbrook	89	10/24/11
Borger	GPCH, L.L.C. dba Golden Plains Community Hospital	L04369	Borger	15	10/28/11
Brownwood	3M Company	L00918	Brownwood	42	11/10/11
Corpus Christi	Flint Hills Resources	L06360	Corpus Christi	01	11/02/11
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	188	11/08/11
Dallas	Cardinal Health	L02048	Dallas	140	11/07/11
Dallas	Cardinal Health	L05610	Dallas	20	11/07/11
El Paso	Providence Memorial Hospital	L02353	El Paso	103	11/08/11
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	71	11/08/11
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	87	10/28/11
Fort Worth	Heartplace, P.A.	L05883	Fort Worth	07	10/31/11
Hereford	Deaf Smith County Hospital District dba Hereford Regional Medical Center	L03111	Hereford	18	11/02/11
Houston	The Christus Stehlin Foundation for Cancer Research	L04244	Houston	08	10/28/11
Houston	Texas Children's Hospital	L04612	Houston	52	11/01/11
Houston	Texas Children's Hospital	L04612	Houston	53	11/04/11
Houston	Cardinal Health	L05536	Houston	31	11/07/11
Houston	Material Inspection Technology, Inc.	L05672	Houston	37	10/31/11
Houston	Houston Northwest Operating Company, L.L.C. dba Houston Northwest Medical Center	L06190	Houston	13	11/02/11
Houston	Memorial Hermann Medical Group	L06430	Houston	01	10/31/11
Houston	Memorial Hermann Medical Group	L06430	Houston	02	11/08/11
Jewett	Nucor Steel	L02504	Jewett	21	11/02/11
New Braunfels	Cancer Care Network of South Texas, P.A.	L05717	New Braunfels	19	11/09/11
Orange	Invista, Inc.	L05777	Orange	09	11/09/11
Pasadena	Equistar Chemicals, L.P.	L04409	Pasadena	08	11/02/11
Point Comfort	Alcoa World Alumina Atlantic	L05186	Point Comfort	10	11/02/11
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	213	10/31/11
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	214	11/08/11
San Antonio	Raba-Kistner Consultants, Inc. dba Raba-Kistner-Brytest Consultants, Inc.	L01571	San Antonio	67	10/24/11
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	133	11/04/11
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	134	11/08/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	Cardiovascular Associates of San Antonio, P.A.	L04996	San Antonio	18	11/09/11
San Antonio	M. M. Ontiveros, M.D., P.A.	L05675	San Antonio	10	11/07/11
Stafford	Aloki Enterprise, Inc.	L06257	Stafford	19	11/01/11
Stafford	Aloki Enterprise, Inc.	L06257	Stafford	20	11/14/11
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	32	11/07/11
Sweeny	Conocophillips Company	L00337	Sweeny	56	10/31/11
Texarkana	Advanced Cardiology of Texarkana	L05976	Texarkana	05	10/31/11
The Woodlands	Lexicon Pharmaceuticals, Inc.	L04932	The Woodlands	22	10/24/11
The Woodlands	Woodlands Internists, P.A.	L06201	The Woodlands	03	11/04/11
Throughout TX	Phoenix Non Destructive Testing Company	L04454	Channelview	59	11/07/11
Throughout TX	Fargo Consultants, Inc.	L05300	Dallas	13	10/31/11
Throughout TX	Gray Wireline Service, Inc.	L03541	Fort Worth	39	11/07/11
Throughout TX	Pathfinder Energy Services, L.L.C.	L05236	Katy	24	10/31/11
Throughout TX	Isotech Laboratories, Inc.	L04283	Midland	24	11/08/11
Throughout TX	Eagle X-Ray, Inc.	L03246	Mont Belvieu	104	11/03/11
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	112	11/01/11
Throughout TX	Midwest Inspection Services	L03120	Perryton	123	11/02/11
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	15	11/14/11
Throughout TX	Styrolution America, L.L.C.	L00354	Texas City	40	10/27/11
Throughout TX	Lamco & Associates	L05152	The Woodlands	10	11/02/11
Throughout TX	City of Weatherford	L04571	Weatherford	12	11/07/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Deer Park	Equistar Chemicals, L.P.	L00204	Deer Park	66	11/07/11
Friendswood	Raj K. Bhalla, M.D., P.A.	L05469	Friendswood	08	10/28/11
Garland	Cardiology Consultants of North Dallas, P.A.	L05454	Garland	12	10/28/11
Throughout TX	Cardinal Surveys Company	L00065	Odessa	76	11/03/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	Metroplex Hematology Oncology Associates dba Arlington Cancer Center	L03211	Arlington	87	10/27/11
Corpus Christi	Flint Hills Resources, L.P.	L00322	Corpus Christi	48	10/27/11
Fort Worth	Kanti C. Gandhi, M.D.	L05756	Fort Worth	06	11/08/11
Harlingen	Valley Diagnostic Clinic, P.A.	L02933	Harlingen	33	11/10/11
Houston	James A. Smelley, M.D. dba Northwest Eye Associates	L01413	Houston	15	11/08/11
Houston	Cardiology Associates of Houston, P.A.	L05608	Houston	06	10/31/11
Throughout TX	Advanced Inspection Technologies	L06228	Spring	04	11/09/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201105193
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 28, 2011

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application to do business in the State of Texas by HOME BUILDERS ASSOCIATION OF GREATER DALLAS BENEFITS TRUST, a domestic Multiple Employer Welfare Arrangement (MEWA). The home office is in Plano, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201105179
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: November 22, 2011

◆ ◆ ◆
Company Licensing

Application for admission to the State of Texas by GEICO ADVANTAGE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Application for admission to the State of Texas by GEICO CHOICE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Application for admission to the State of Texas by GEICO SECURE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201105253
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: November 30, 2011

◆ ◆ ◆
Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application of PROFESSIONAL DATA MANAGEMENT AGAIN, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Godwin Ohaechesi, MC 305-2C, 333 Guadalupe, Austin, Texas 78701.

TRD-201105166
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: November 22, 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 September 9, 2011, issue of the *Texas Register* (36 TexReg 6049). The selected firm will conduct an Economic Market Analysis, Integrated Transportation Corridor Plans to Support Livable Communities, and complete Comprehensive Plan Updates and associated zoning and land use updates for several cities that surround Naval Air Station, Fort Worth, Joint Reserve Base.

The firm selected for this project is Aecom Technical Services Inc., 1360 W. Peachtree Street, Suite 500, Atlanta, GA 30309. The amount of the contract is not to exceed \$400,000.

TRD-201105175
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 22, 2011

◆ ◆ ◆
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 September 16, 2011, issue of the *Texas Register* (36 TexReg 6196). The selected firm will conduct a Speed and System-Wide Boarding and Alighting Study for the Fort Worth Transportation Authority (The T).

The firm selected for this project is PTV NuStats LLC, 206 Wild Basin Road, Suite A-300, Austin, Texas 78746. The amount of the contract is not to exceed \$340,000.

TRD-201105176

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 22, 2011



Notice of Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice of contract award. The proposal request appeared in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7209). The selected firm will perform technical and professional work to install a publicly accessible Plug-in Electric Vehicle (PEV) charging station at the NCTCOG office location.

The firm selected for this project is Ecotality North America, 9400 N. Central Expressway, Suite 111, Dallas, Texas 75231. There is no cost to NCTCOG for this contract award.

TRD-201105174
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 22, 2011



Texas Public Finance Authority

Executive Director

Texas Public Finance Authority (TPFA) is searching for a new Executive Director to lead the agency. Candidates must have a bachelor's degree from an accredited four-year college or university, with courses in public/business administration, economics, finance, or law required; graduate degree in business, law, or finance is preferred. They must have public finance experience, and state agency work is desirable; at least eight years of relevant work experience, with four years in a senior management capacity; substantial knowledge of state agencies and the political decision-making process in state government; and a thorough knowledge of municipal bond markets and various types of debt instruments are required.

TPFA's board has retained an executive search firm, The Waters Consulting Group, Inc., for this process. For details about this position and instructions on how to apply, please visit <http://www.tpfa.state.tx.us/employment.aspx>.

TRD-201105219
Susan K. Durso
General Counsel
Texas Public Finance Authority
Filed: November 29, 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 November 15, 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 Charter Communications VI, LLC d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority; to add the cities of Glen Rose,

Lakeside, Oak Ridge North, and Rockwall, Texas, Project Number 39910.

The requested amendment is to expand the service area footprint to include the municipalities of Ennis, Glen Rose, Lakeside, Oak Ridge North, and Rockwall, 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 39910.

TRD-201105168
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 15, 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 Marcus Cable Associates, LLC d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority; to add the cities of Ovilla, River Oaks, and Trophy Club, Texas, Project Number 39911.

The requested amendment is to expand the service area footprint to include the municipalities of Ovilla, River Oaks, and Trophy Club, 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 39911.

TRD-201105169
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2011



Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 21, 2011, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Private Cable Solutions, Inc. for State-Issued Certificate of Franchise Authority, Project Number 39923.

The requested CFA service area consists of the following counties: Collin, Denton, Dallas, Tarrant, Rockwall, Kaufman, Grayson, Cooke, Fannin, Hunt, Williamson, Travis, Bastrop, Hays, Burnet, Comal,

Guadalupe, Bexar, Harris, Montgomery, Galveston, Fort Bend, Brazos, McLennan, Smith, Greg, and Lamar, 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 39923.

TRD-201105178
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2011



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 28, 2011, Unite Private Networks, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Certificate Number 60879. Applicant seeks to reflect a transfer of control to Ridgemont Equity Partners I, LP.

The Application: Application of Unite Private Networks, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 39934.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than December 16, 2011. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 39934.

TRD-201105237
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 29, 2011



Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On November 18, 2011, Covad Communications Company and DSLnet Communications, LLC filed an application with the Public

Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) Numbers 60192 and 60253. Applicants intend to relinquish their certificates.

The Application: Application of Covad Communications Company and DSLnet Communications, LLC to Relinquish Service Provider Certificates of Operating Authority, Docket Number 39922.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than Wednesday, December 14, 2011. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 39922.

TRD-201105170
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2011



Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15 of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet as of August 31 of the preceding school year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS publishes the following reports as required by subsections (a) and (b) of §825.108 of the Government Code:

Statement of Fiduciary Net Assets

AUGUST 31, 2011

(With Comparative Data for Pension and Other Employee Benefit Trust Funds for August 31, 2010)

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	TRS-Care (Retired Plan)
ASSETS		
Cash		
Cash in State Treasury	\$ 891,767,954	\$ 928,047,496
Cash in Bank	184,856,481	
Cash on Hand	2,563,416	
TOTAL CASH	\$ 1,079,187,851	\$ 928,047,496
Receivables		
Sale of Investments	\$ 931,132,294	\$
Interest and Dividends	244,762,871	657,739
Member and Retiree	80,060,214	39,998,328
Reporting Entities	44,574,753	8,680,440
Other	234,809	10,948,726
Due from State's General Fund		2,795,631
Due from Employees Retirement System of Texas	1,219,459	
TOTAL RECEIVABLES	\$ 1,301,984,400	\$ 63,080,864
Investments		
Short-Term	\$ 12,213,781,658	\$
Short-Term Foreign Currency Contracts	(44,158)	
Equities	41,913,520,425	
Fixed Income	20,442,247,585	
Alternative Investments	26,905,492,896	
Derivative Investments	(93,266,114)	
Pooled Investments	4,666,369,268	
TOTAL INVESTMENTS	\$ 106,048,101,560	\$ 0
Invested Securities Lending Collateral	\$ 22,760,168,002	\$ 0
Capital Assets		
Intangible Assets	\$ 8,839,708	\$
Less Accumulated Amortization	(7,908,543)	
Depreciable Assets	46,476,931	
Less Accumulated Depreciation	(20,692,331)	
Non-Depreciable Assets	2,329,417	
TOTAL CAPITAL ASSETS	\$ 29,045,182	\$ 0
TOTAL ASSETS	\$ 131,218,486,995	\$ 991,128,360

EXHIBIT I

		FIDUCIARY FUND TYPES	
TOTAL - PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS			
2011	2010	Agency Funds	
\$ 1,819,815,450	\$ 1,735,044,840	\$	3,977
184,856,481	84,868,536		
2,563,416	3,672,003		
<u>\$ 2,007,235,347</u>	<u>\$ 1,823,585,379</u>	<u>\$</u>	<u>3,977</u>
\$ 931,132,294	\$ 147,800,560	\$	
245,420,610	224,372,715		
120,058,542	121,996,630		
53,255,193	57,397,895		
11,183,535	11,656,975		
2,795,631	41,871,897		
1,219,459	971,294		
<u>\$ 1,365,065,264</u>	<u>\$ 606,067,966</u>	<u>\$</u>	<u>0</u>
\$ 12,213,781,658	\$ 8,175,829,363	\$	
(44,158)	(467,338)		
41,913,520,425	42,805,497,400		
20,442,247,585	19,502,462,264		
26,905,492,896	21,070,904,758		
(93,266,114)	(123,664,947)		
4,666,369,268	3,494,599,035		
<u>\$ 106,048,101,560</u>	<u>\$ 94,925,160,535</u>	<u>\$</u>	<u>0</u>
<u>\$ 22,760,168,002</u>	<u>\$ 23,601,464,926</u>	<u>\$</u>	<u>0</u>
\$ 8,839,708	\$ 12,853,867	\$	
(7,908,543)	(7,753,817)		
46,476,931	40,899,745		
(20,692,331)	(18,622,169)		
2,329,417	3,620,047		
<u>\$ 29,045,182</u>	<u>\$ 30,997,673</u>	<u>\$</u>	<u>0</u>
<u>\$ 132,209,615,355</u>	<u>\$ 120,987,276,479</u>	<u>\$</u>	<u>3,977</u>

Statement of Fiduciary Net Assets

AUGUST 31, 2011

(concluded)

(With Comparative Data for Pension and Other Employee Benefit Trust Funds for August 31, 2010)

EXHIBIT I

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	TRS-Care (Retired Plan)
LIABILITIES		
Accounts Payable	\$ 7,783,405	\$ 977,410
Payroll Payable	3,645,801	162,475
External Manager Fees Payable	44,297,345	
Benefits Payable	649,896,558	
Health Care Claims Payable		98,934,646
Investments Purchased Payable	235,903,809	
Collateral Obligations	22,779,223,912	
Due to State's General Fund	45,577,164	
Due to Employees Retirement System of Texas	5,656,783	
Purchased Service Installment Receipts	19,563,023	
Compensable Absences Payable	4,618,755	183,523
Deferred Rent	1,533,547	
Funds Held for Others		
TOTAL LIABILITIES	\$ 23,797,700,102	\$ 100,258,054
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS	\$ 107,420,786,893	\$ 890,870,306

TOTAL - PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		FIDUCIARY FUND TYPES
2011	2010	Agency Funds
\$ 8,760,815	\$ 4,927,492	\$
3,808,276	14,488,487	
44,297,345	4,082,409	
649,896,558	578,168,075	
98,934,646	127,607,686	
235,903,809	119,435,388	
22,779,223,912	23,581,689,266	
45,577,164	19,411,437	
5,656,783	5,126,112	
19,563,023	21,223,985	
4,802,278	5,538,937	
1,533,547	2,207,893	
		3,977
\$ 23,897,958,156	\$ 24,483,907,167	\$ 3,977
\$ 108,311,657,199	\$ 96,503,369,312	\$ 0

Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2011 (With Comparative Data for August 31, 2010)

EXHIBIT II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	TRS-Care (Retired Plan)
ADDITIONS		
Contributions		
Contributions Paid by Member	\$ 2,243,954,725	\$ 183,808,580
Employer:		
Contributions from State's General Fund	1,595,771,774	256,997,446
Contributions from Federal/Private Funding Sources	324,764,720	25,784,985
Legislative Revenue from State's General Fund Paid on Behalf of TRS for Employee Fringe Benefits		108,440
Reporting Entities	411,889,817	155,471,641
Purchase of Service Credit - Refundable	45,158,612	
Purchase of Service Credit - Non-Refundable	60,018,492	
Contributions from Employee's Retirement System of Texas:		
For Service Contributions	12,628,712	
For 415 Excess Benefit Arrangement	45,053	
Contributions from the State for 415 Excess Benefit Arrangement	1,705,535	
Employment after Retirement Surcharge paid by		
Reporting Entities:		
Employee	3,983,605	
Employer	4,095,094	3,252,369
Health Care Premiums		345,164,271
Federal Revenue		136,887,805
TOTAL CONTRIBUTIONS AND PREMIUMS	\$ 4,704,016,139	\$ 1,107,475,537
Investment Income		
From Investing Activities:		
Net Appreciation in Fair Value of Investments	\$ 12,616,681,465	\$
Interest	1,003,311,852	8,168,640
Dividends	1,120,858,771	
Total Investing Activities Income	\$ 14,740,852,088	\$ 8,168,640
Less: Investing Activity Expenses	(183,369,775)	
Net Income From Investing Activities	\$ 14,557,482,313	\$ 8,168,640
From Securities Lending Activities:		
Securities Lending Income	\$ 135,755,199	\$
Securities Lending Expenses:		
Borrower Rebates	(36,111,713)	
Management Fees	(20,190,571)	
Net Income from Securities Lending Activities	\$ 79,452,915	\$ 0
TOTAL NET INVESTMENT INCOME	\$ 14,636,935,228	\$ 8,168,640
Other Additions		
Legislative Appropriations	\$	\$
Miscellaneous Revenues	1,576,613	
TOTAL OTHER ADDITIONS	\$ 1,576,613	\$ 0
TOTAL ADDITIONS	\$ 19,342,527,980	\$ 1,115,644,177

**TOTAL - PENSION AND OTHER EMPLOYEE
BENEFIT TRUST FUNDS**

2011	2010
\$ 2,427,763,305	\$ 2,386,530,281
1,852,769,220	1,828,247,655
350,549,705	332,407,488
108,440	262,486
567,361,458	559,521,632
45,158,612	37,442,030
60,018,492	47,077,732
12,628,712	11,167,772
45,053	43,562
1,705,535	1,460,948
3,983,605	2,989,345
7,347,463	5,675,767
345,164,271	332,481,933
136,887,805	70,795,686
<u>\$ 5,811,491,676</u>	<u>\$ 5,616,104,317</u>
\$ 12,616,681,465	\$ 7,542,738,000
1,011,480,492	924,165,767
1,120,858,771	958,159,970
<u>\$ 14,749,020,728</u>	<u>\$ 9,425,063,737</u>
(183,369,775)	(111,918,654)
<u>\$ 14,565,650,953</u>	<u>\$ 9,313,145,083</u>
\$ 135,755,199	\$ 164,683,341
(36,111,713)	(40,036,033)
(20,190,571)	(16,331,481)
<u>\$ 79,452,915</u>	<u>\$ 108,315,827</u>
<u>\$ 14,645,103,868</u>	<u>\$ 9,421,460,910</u>
\$ 1,576,613	\$ 2,805,955
	2,453,980
<u>\$ 1,576,613</u>	<u>\$ 5,259,935</u>
<u>\$ 20,458,172,157</u>	<u>\$ 15,042,825,162</u>

Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2011 (With Comparative Data for August 31, 2010)

(concluded)

EXHIBIT II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	TRS-Care (Retired Plan)
DEDUCTIONS		
Benefits	\$ 7,173,504,788	\$
415 Excess Benefit Arrangement	1,547,229	
Benefits Paid to Employee's Retirement System of Texas:		
For Service Contributions	64,772,079	
For 415 Excess Benefit Arrangement	203,359	
Refunds of Contributions - Active	330,284,482	
Refunds of Contributions - Death	3,984,340	
Health Care Claims		992,478,380
Health Care Claims Processing		44,007,586
Premium Payments to HMO's		108,286
Administrative Expenses, Excluding		
Investing Activity Expenses:		
Salaries and Wages	17,207,826	1,679,019
Payroll Related Costs	4,705,791	402,013
Professional Fees and Services	488,028	799,324
Travel	148,784	4,486
Materials and Supplies	4,824,890	118,957
Communications and Utilities	474,586	1,466
Repairs and Maintenance	794,811	
Rentals and Leases	252,570	116,564
Printing and Reproduction	291,769	14,276
Depreciation	1,128,178	
Amortization	154,726	
Loss on Impairment of Capital Asset	4,477,619	
Other Expenses	900,241	7,817
TOTAL DEDUCTIONS	\$ 7,610,146,096	\$ 1,039,738,174
Change in Net Assets	\$ 11,732,381,884	\$ 75,906,003
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS - BEGINNING OF YEAR	\$ 95,688,405,009	\$ 814,964,303
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS - END OF YEAR	\$ 107,420,786,893	\$ 890,870,306

**TOTAL - PENSION AND OTHER
EMPLOYEE BENEFIT TRUST FUNDS**

2011	2010
\$ 7,173,504,788	\$ 6,617,397,376
1,547,229	1,301,151
64,772,079	61,570,749
203,359	203,359
330,284,482	261,475,649
3,984,340	3,710,940
992,478,380	971,356,805
44,007,586	42,435,939
108,286	99,662
18,886,845	17,680,495
5,107,804	4,896,860
1,287,352	2,238,578
153,270	23,974
4,943,847	2,277,466
476,052	845,934
794,811	2,081,982
369,134	419,804
306,045	518,411
1,128,178	659,943
154,726	824,572
4,477,619	
908,058	556,275
<u>\$ 8,649,884,270</u>	<u>\$ 7,992,575,924</u>
\$ 11,808,287,887	\$ 7,050,249,238
<u>\$ 96,503,369,312</u>	<u>\$ 89,453,120,074</u>
<u><u>\$ 108,311,657,199</u></u>	<u><u>\$ 96,503,369,312</u></u>

Statement of Net Assets

PROPRIETARY FUNDS

AUGUST 31, 2011 (With Comparative Data for August 31, 2010)

EXHIBIT III

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Certification Program
ASSETS		
Current Assets		
Cash		
Cash in State Treasury	\$ 259,110,267	\$ 146,859
TOTAL CASH	\$ 259,110,267	\$ 146,859
Accounts Receivable		
Interest	\$ 224,584	\$ 99
Health Care Premiums	105,994,766	
ARRA Cobra Premiums	44,519	
TOTAL ACCOUNTS RECEIVABLE	\$ 106,263,869	\$ 99
TOTAL ASSETS	\$ 365,374,136	\$ 146,958
LIABILITIES		
Current Liabilities		
Accounts Payable	\$ 84,790	\$
Payroll Payable	113,364	11,737
Premiums Payable to HMOs	6,238,055	
Health Care Claims Payable	170,741,328	
Compensable Absences Payable	80,504	8,501
TOTAL CURRENT LIABILITIES	\$ 177,258,041	\$ 20,238
Non-Current Liabilities		
Compensable Absences Payable	\$ 46,668	\$ 4,688
TOTAL NON-CURRENT LIABILITIES	\$ 46,668	\$ 4,688
TOTAL LIABILITIES	\$ 177,304,709	\$ 24,926
NET ASSETS		
Restricted for Health Care Programs	\$ 188,069,427	\$
Restricted for 403(b) Program Administration		122,032
TOTAL NET ASSETS	\$ 188,069,427	\$ 122,032

Total Enterprise Funds

2011**2010**

\$ 259,257,126 \$ 387,561,788

\$ 259,257,126 \$ 387,561,788

\$ 224,683 \$ 419,236

105,994,766 63,350,046

44,519 446,080

\$ 106,263,968 \$ 64,215,362

\$ 365,521,094 \$ 451,777,150

\$ 84,790 \$ 63,636

125,101 115,771

6,238,055 5,308,671

170,741,328 146,100,209

89,005 85,369

\$ 177,278,279 \$ 151,673,656

\$ 51,356 \$ 47,590

\$ 51,356 \$ 47,590

\$ 177,329,635 \$ 151,721,246

\$ 188,069,427 \$ 299,810,127

122,032 245,777

\$ 188,191,459 \$ 300,055,904

Statement of Revenues, Expenses and Changes in Fund Net Assets

PROPRIETARY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2011 (With Comparative Data for August 31, 2010)

EXHIBIT IV

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Certification Program
OPERATING REVENUES		
Health Care Premiums	\$ 1,549,530,891	\$
Administrative Fees	135,917	
Certification Fees		12,000
Product Registration Fees		3,000
TOTAL OPERATING REVENUES	\$ 1,549,666,808	\$ 15,000
OPERATING EXPENSES		
Health Care Claims	\$ 1,510,090,981	\$
Health Care Claims Processing	76,960,951	
Premium Payments to HMOs	76,270,706	
Administrative Expenses		
Salaries and Wages	1,144,484	115,014
Payroll Related Cost	257,632	33,430
Professional Fees and Services	726,115	
Materials and Supplies	4,390	
Communication and Utilities	883	
Travel	2,221	
Rental and Leases	65,140	
Printing and Reproduction	885	
Other Operating Expenses	5,301	
TOTAL OPERATING EXPENSES	\$ 1,665,529,689	\$ 148,444
OPERATING (LOSS)	\$ (115,862,881)	\$ (133,444)
NON-OPERATING REVENUES		
Investment Income	\$ 3,387,062	\$ 1,801
Federal Revenue - ARRA Cobra Reimbursements	667,746	
On Behalf Fringe Benefits Paid by the State	67,373	7,898
TOTAL NON-OPERATING REVENUES	\$ 4,122,181	\$ 9,699
Change in Net Assets	\$ (111,740,700)	\$ (123,745)
TOTAL NET ASSETS - BEGINNING	\$ 299,810,127	\$ 245,777
TOTAL NET ASSETS - ENDING	\$ 188,069,427	\$ 122,032

Total Enterprise Funds

2011	2010
\$ 1,549,530,891	\$ 1,329,171,411
135,917	125,321
12,000	30,000
3,000	21,000
<hr/>	<hr/>
\$ 1,549,681,808	\$ 1,329,347,732
\$ 1,510,090,981	\$ 1,313,114,197
76,960,951	67,906,654
76,270,706	64,532,253
1,259,498	1,217,962
291,062	275,858
726,115	478,581
4,390	9,121
883	1,021
2,221	3,358
65,140	65,745
885	209
5,301	4,128
<hr/>	<hr/>
\$ 1,665,678,133	\$ 1,447,609,087
<hr/>	<hr/>
\$ (115,996,325)	\$ (118,261,355)
\$ 3,388,863	\$ 6,425,587
667,746	1,225,158
75,271	72,362
<hr/>	<hr/>
\$ 4,131,880	\$ 7,723,107
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\$ (111,864,445)	\$ (110,538,248)
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\$ 300,055,904	\$ 410,594,152
<hr/>	<hr/>
\$ 188,191,459	\$ 300,055,904
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Statement of Cash Flows

PROPRIETARY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2011 (With Comparative Data for August 31, 2010)

EXHIBIT V

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Certification Program
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from Health Care Premiums	\$ 1,506,886,171	\$
Receipts from Long-Term Care Administrative Fees	135,917	
Receipts from Certification/Product Registration Fees		15,000
Payments for Administrative Expenses	(2,164,504)	(153,105)
Payments for Health Care Claims	(1,485,449,862)	
Payments for Health Care Claims Processing	(76,960,951)	
Payments for HMO Premiums	(75,341,322)	
NET CASH (USED) BY OPERATING ACTIVITIES	\$ (132,894,551)	\$ (138,105)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Proceeds from Federal Revenue	\$ 1,069,307	\$
Proceeds from on Behalf Fringe Benefits Paid by the State	67,373	7,898
NET CASH PROVIDED BY NON-CAPITAL FINANCING ACTIVITIES	\$ 1,136,680	\$ 7,898
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest Received	\$ 3,581,445	\$ 1,971
NET CASH PROVIDED BY INVESTING ACTIVITIES	\$ 3,581,445	\$ 1,971
Net (Decrease) in Cash	\$ (128,176,426)	\$ (128,236)
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	\$ 387,286,693	\$ 275,095
CASH AND CASH EQUIVALENTS - AUGUST 31	\$ 259,110,267	\$ 146,859
RECONCILIATION OF OPERATING (LOSS) TO NET CASH (USED) BY OPERATING ACTIVITIES		
Operating (Loss)	\$ (115,862,881)	\$ (133,444)
Adjustments to Reconcile Operating (Loss) to Net Cash (Used) by Operating Activities:		
Changes in Assets and Liabilities:		
(Increase) in Health Care Premiums Receivable	\$ (42,644,720)	\$
Increase (Decrease) in Premiums Payable to HMOs	929,384	
Increase in Health Care Claims Payable	24,641,119	
Increase (Decrease) in Accounts Payable	21,154	
Increase (Decrease) in Payroll Payable	9,955	(625)
Increase (Decrease) in Compensable Absences Payable	11,438	(4,036)
Total Adjustments	\$ (17,031,670)	\$ (4,661)
Net Cash (Used) by Operating Activities	\$ (132,894,551)	\$ (138,105)

Total Enterprise Funds

	2011		2010
\$	1,506,886,171	\$	1,322,251,502
	135,917		125,321
	15,000		51,000
	(2,317,609)		(2,075,599)
	(1,485,449,862)		(1,295,363,008)
	(76,960,951)		(67,812,825)
	(75,341,322)		(64,559,935)
	<hr/>		<hr/>
\$	(133,032,656)	\$	(107,383,544)
	<hr/>		<hr/>
\$	1,069,307	\$	949,297
	<hr/>		<hr/>
	75,271		72,362
	<hr/>		<hr/>
\$	1,144,578	\$	1,021,659
	<hr/>		<hr/>
\$	3,583,416	\$	6,795,240
	<hr/>		<hr/>
\$	3,583,416	\$	6,795,240
	<hr/>		<hr/>
\$	(128,304,662)	\$	(99,566,645)
	<hr/>		<hr/>
\$	387,561,788	\$	487,128,433
	<hr/>		<hr/>
\$	259,257,126	\$	387,561,788
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\$	(115,996,325)	\$	(118,261,355)
	<hr/>		<hr/>
\$	(42,644,720)	\$	(6,765,305)
	929,384		(27,682)
	24,641,119		17,845,019
	21,154		(196,612)
	9,330		3,309
	<hr/>		<hr/>
	7,402		19,082
	<hr/>		<hr/>
\$	(17,036,331)	\$	10,877,811
	<hr/>		<hr/>
\$	(133,032,656)	\$	(107,383,544)
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Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2011

EXHIBIT A

	Balances September 1, 2010	Additions	Deductions	Balances August 31, 2011
Employees' Savings Bond Account				
Assets:				
Cash in State Treasury	\$ 500	\$	\$ 500	\$ 0
Liabilities:				
Funds Held for Others	\$ 500	\$	\$ 500	\$ 0
Child Support Employee Deductions				
Assets:				
Cash in State Treasury	\$ 3,607	\$ 36,473	\$ 36,103	\$ 3,977
Liabilities:				
Funds Held for Others	\$ 3,607	\$ 32,866	\$ 32,496	\$ 3,977
Totals - All Agency Funds				
				(Exhibit I)
Assets:				
Cash in State Treasury	\$ 4,107	\$ 36,473	\$ 36,603	\$ 3,977
TOTAL ASSETS	\$ 4,107	\$ 36,473	\$ 36,603	\$ 3,977
Liabilities:				
Funds Held for Others	\$ 4,107	\$ 32,866	\$ 32,996	\$ 3,977
TOTAL LIABILITIES	\$ 4,107	\$ 32,866	\$ 32,996	\$ 3,977

Investment Performance

Annualized Time-Weighted Total Returns

FOR THE FISCAL YEAR ENDED AUGUST 31, 2011

	One Year	Three Years	Five Years	Ten Years
Total Fund (A)	15.47%	3.56%	4.01%	5.78%
Total Global Equity:	<u>16.23%</u>	<u>1.33%</u>	<u>2.02%</u>	<u>5.00%</u>
Public Equity	14.35	0.36	1.11	4.39
Private Equity	24.70	5.72	10.40	13.64
Total Stable Value:	<u>7.50%</u>	<u>9.06%</u>	<u>7.12%</u>	<u>6.42%</u>
Fixed Income (B)	8.96	12.08	10.09	7.90
Hedge Funds	3.99	0.82	2.41	4.29
Cash Equivalents (C)	0.18	0.18	2.11	2.29
Total TRS Real Return:	<u>17.62%</u>	<u>0.75%</u>	<u>6.02%</u>	<u>5.99%</u>
Inflation Linked Bonds	11.18	7.62	(E)	(E)
Real Assets	17.63	-8.46	-2.14	1.82
Commodities	31.64	-10.60	(E)	(E)
REITS (D)	18.81	2.99	(E)	(E)

EXHIBIT B

Note A: All returns were calculated by the Custodian.

Note B: Does not include Global Inflation Linked Bonds in Real Return Portfolio.

Note C: Cash return reflects TRS-managed cash account and cash equivalents net of fees.

Note D: Dedicated portfolio in addition to Global Equity holdings.

Note E: No performance data is available because these asset classes were established within the last five years.

Note: The rate of return for other TRS funds, TRS-Care, TRS-ActiveCare, and the 403(b) Certification Program is 0.44 percent.



November 1, 2011

BOARD OF TRUSTEES

Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2011

We certify that the information included herein and contained in the 2011 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2011.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. White and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates are set by Law. The actuarially determined contribution rates determined in this actuarial valuation are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 30 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2011, the System's under-funded status has increased to \$24.1 billion from \$22.9 billion as of August 31, 2010. This increase in the UAAL is due to a loss on the actuarial value of assets of the System.

This valuation shows a normal cost equal to 10.60% of pay. The State set its contribution rate to 6.00% of pay as of September 1, 2011, which combined with the member contribution rate of 6.40% of pay provides a total contribution rate of 12.40% of pay. Therefore, there is 1.80% of pay available to amortize the UAAL. If payroll grows as expected, the contributions provided by this portion of the contribution rate are insufficient to amortize the current unfunded actuarial accrued liabilities of the System over any period of time (i.e. the funding period is never). Although the state contribution is scheduled to increase to 6.40% in fiscal year 2013, if the current assumptions are met (the trust earns an average 8.0% per annum) and the current 6.40% member contribution rate and the State fiscal year 2013 contribution rate of 6.40% continue, the fund is projected to remain solvent until the year 2075, after which the funding would return to a pay-as-you-go status. Therefore, for the current benefit structure to be sustainable, the contribution levels will need to be increased if all of the current assumptions are met.

The actuarial valuation report as of August 31, 2011 reveals that while the System has an unfunded liability of \$24.1 billion, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 82.7%. However, because of the significant shortfall in investment income in FY2009, the System is still deferring net investment losses of \$7.8 billion compared to the last valuation when the System was deferring \$15.6 billion in deferred losses and the funded status using the market value of assets is only 77.1%. If there are no significant investment gains or other actuarial gains over the next several years, the funded status of the System would be expected to decline towards this number.

The System earned a 15.5% return on a dollar-weighted market value of assets basis for the plan year ending August 31, 2011, net of expenses. The System experienced a loss on the actuarial value of assets of \$2.0 billion and a gain on the actuarial liabilities of

\$1.4 billion and a gain due to assumption change of \$0.3 billion for a total experience related loss of \$0.3 billion.

In the absence of significant actuarial gains in the near future, the contribution rate needed to amortize the UAAL over 30 years will increase over the next few valuation cycles.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. There have been no changes to the benefit provisions of the System since the prior valuation.

Disclosure of Pension Information

Effective for the fiscal year ending August 31, 1996, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25. The required disclosure information is included in the body of the valuation report.

This report should not be relied on for any purpose other than the purpose described above. Determinations of the financial results associated with the benefits described in this report in a manner other than the intended purpose may produce significantly different results.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2010 and were adopted on April 8, 2011.

The following assumptions and methods have been modified since the prior valuation:

- Small reductions in the rates of retirement at most age and service combinations
- Decrease in the post-retirement rates of mortality for both males and females
- The salary increase assumption in the first year of employment was reduced
- The method for determining the actuarial value of assets was modified to a method that sets the actuarial value of assets as the expected actuarial value of assets plus 20% of the difference between the actual market value of assets and the expected actuarial value of assets

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

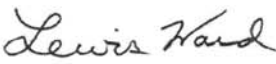
In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

Data

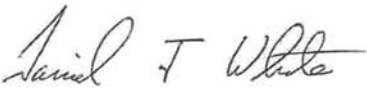
In preparing the August 31, 2011 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company


Lewis Ward
Consultant


Joseph P. Newton, FSA, EA, MAAA
Senior Consultant


Daniel J. White, FSA, EA, MAAA
Senior Consultant

Gabriel Roeder Smith & Company



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November 1, 2011

BOARD OF TRUSTEES

Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: GASB 43 Actuarial Valuation as of August 31, 2011 for TRS-Care

Submitted in this report are the results of an Actuarial Valuation of the liabilities associated with the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS). The date of the valuation was August 31, 2011. This report was prepared at the request of TRS.

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results.

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board based on the 2010 Experience Study of TRS. Assumptions applicable only to TRS-Care have changed since the prior report, and they are disclosed in the assumptions section of this report.

To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods.

One or more of the undersigned are members of the American Academy of Actuaries and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

Respectfully submitted,

William J. Hickman
Senior Consultant

Joseph P. Newton, FSA, MAAA
Senior Consultant

Mehdi Riazi, ASA, EA, MAAA
Actuary

Actuarial Present Value of Future Benefits - Pension Trust Fund

From Actuarial Valuation as of August 31, 2011 (With Comparative Data for August 31, 2010)

	2011	2010
Present Value of Benefits Presently Being Paid		
Service Retirement Benefits	\$ 61,583,573,864	\$ 56,633,460,577
Disability Retirement Benefits	909,607,883	891,512,713
Death Benefits	769,355,667	754,052,179
Present Survivor Benefits	207,631,666	197,246,581
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	\$ 63,470,169,080	\$ 58,476,272,050
Present Value of Benefits Payable in the Future to Present Active Member		
Service Retirement Benefits	\$ 95,886,611,576	\$ 95,802,642,330
Disability Retirement Benefits	1,343,397,174	1,265,949,485
Termination Benefits	6,952,317,408	6,067,357,073
Death and Survivor Benefits	1,744,820,375	1,513,834,539
TOTAL ACTIVE MEMBER LIABILITIES	\$ 105,927,146,533	\$ 104,649,783,427
Present Value of Benefits Payable in the Future to Present Inactive Members		
Inactive Vested Participants:		
Retirement Benefits	\$ 2,221,502,905	1,798,775,860
Death Benefits	128,252,686	122,792,410
TOTAL INACTIVE VESTED BENEFITS	\$ 2,349,755,591	\$ 1,921,568,270
Refunds of Contributions to Inactive Non-vested Members	\$ 311,886,726	\$ 294,211,296
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 1,145,189,668	\$ 1,103,421,506
TOTAL INACTIVE LIABILITIES	\$ 3,806,831,985	\$ 3,319,201,072
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	\$ 173,204,147,598	\$ 166,445,256,549

Summary of Cost Items

	2011	2010
Actuarial Present Value of Future Benefits	\$ 173,204,147,598	\$ 166,445,256,549
Present Value of Future Normal Costs	(33,889,057,041)	(32,254,146,314)
Actuarial Accrued Liability	\$ 139,315,090,557	\$ 134,191,110,235
Actuarial Value of Assets	(115,252,828,399)	(111,292,527,887)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	\$ 24,062,262,158	\$ 22,898,582,348

Actuarial Present Value of Future Benefits - TRS-Care

From Actuarial Valuation as of August 31, 2011 (With Comparative Data for August 31, 2010)

Based on a 5.25% discount rate

	2011	2010
Present Value of Benefits Being Paid		
Future Medical Claims	\$ 8,970,466,574	\$ 7,098,035,116
Future Rx Claims	9,560,281,792	8,484,675,649
Retiree Premiums Collected	(4,820,521,600)	(4,664,226,865)
NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES	\$ 13,710,226,766	\$ 10,918,483,900
Present Value of Benefits Payable in the Future to Present Active Members		
Future Medical Claims	\$ 22,513,074,606	\$ 21,258,228,041
Future Rx Claims	19,700,869,923	20,923,712,165
Retiree Premiums Collected	(10,795,062,742)	(12,748,598,151)
NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES	\$ 31,418,881,787	\$ 29,433,342,055
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	\$ 45,129,108,553	\$ 40,351,825,955

Summary of Cost Items

	2011	2010
Actuarial Present Value of Future Benefits	\$ 45,129,108,553	\$ 40,351,825,955
Present Value of Future Normal Costs	(15,343,939,596)	(14,544,057,386)
Actuarial Accrued Liability	\$ 29,785,168,957	\$ 25,807,768,569
Actuarial Value of Assets	(890,870,306)	(814,964,303)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	\$ 28,894,298,651	\$ 24,992,804,266

These reports include the actuarial valuation of the Texas Public School Retired Employees Group Benefits Program (TRS-Care) dated August 31, 2011. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and Chapter 2266 of the Government Code, including Subchapter C of that chapter relating to Other Postemployment Benefits.

TRD-201105220
 Brian Guthrie
 Executive Director
 Teacher Retirement System of Texas
 Filed: November 29, 2011



Texas Department of Transportation

Aviation Division - Request for Proposal for Land Acquisition Services

Tejas Avco, Inc., through its agent the Texas Department of Transportation, intends to engage a land acquisition firm for a five year contract period for services pursuant to Government Code, Chapter 2254, Subchapter A. Tejas Avco will solicit and receive proposals from land acquisition firms as described below:

Airport Sponsor: Tejas Avco. Airport: Houston Southwest. Airport Project Number: 1212HOUSW. There is no DBE goal. Project Manager is Scott Bryan.

Tejas Avco, through its agent the Texas Department of Transportation, is soliciting proposals from land acquisition companies for: survey, appraisal, appraisal review, negotiations, relocation assistance if applicable, title services, closing, and other services as required for land acquisition for the Houston Southwest Airport.

These services must be conducted and performed in compliance with 49 C.F.R. Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federally Funded Project (URARPA). Appraisal and

appraiser review must be completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Proposals may not exceed the number of pages in the proposal format as listed below:

1. No more than **one** page listing professional qualifications.
2. No more than **two** pages listing experience of the firm and team or individuals. Please include an address, phone, fax, and email address of the main contact for this RFP.
3. No more than **two** pages listing understanding of applicable rules, regulations, policies and other requirements associated with federally funded projects.
4. No more than **two** pages describing technical approach to Land Acquisition process.
5. Copy of license for appraiser, review appraisal, and any other applicable licenses.

The proposal shall address the criteria listed below:

1. Professional Qualifications. 20 points
2. Experience of the firm and team or individuals. 20 points
3. Understanding of applicable rules, regulations, policies and other requirements associated with federally funded projects. 20 points
4. Description of technical approach to land acquisition process. 20 points
5. Licensed appraiser, review appraiser and any other applicable licenses. 20 points

Four copies of the proposal shall be produced on 8 and one half inches by 11 inches white paper, single sided using no smaller than a 12 pitch font size. Proposal shall be stapled and not bound in any other format. Introduction and/or transmittal letters will be detached from the proposal. Do not include extraneous materials. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

Proposals **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 28, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of airport management and TxDOT Aviation members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Scott Bryan, Project Manager.

TRD-201105171
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: November 22, 2011



Aviation Division - Request for Proposal for Professional Engineering Services

The City of Sulphur Springs, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Sulphur Springs, Sulphur Springs Municipal Airport. TxDOT CSJ No. 12ALSULPH. Scope: update the Airport Layout Plan.

There is no DBE goal. TxDOT Project Manager is Sandra Braden.

Interested firms shall utilize the Form AVN-551 titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **January 3, 2012**, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Sandra Braden, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201105226
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 29, 2011



Aviation Division - Request for Proposal for Professional Engineering Services

The City of Sulphur Springs, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Sulphur Springs Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Sulphur Springs. TxDOT CSJ No.: 1201SULPR. Scope: Provide engineering/design services for hangar area drainage study at Sulphur Springs Municipal Airport.

There is no DBE goal. TxDOT Project Manager is Harry Lorton.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate aprons
2. Replace sign panels
3. Install REIL Runway 36
4. Rehabilitate entrance road
5. Rehabilitate and mark Runway 18-36
6. Rehabilitate and mark taxiways

The City of Sulphur Springs reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Sulphur Springs Municipal Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **January 3, 2012**, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201105227

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: November 29, 2011



Aviation Division - Request for Proposal for Professional Engineering Services

The City of Nacogdoches, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the A.L. Mangham, Jr., Regional Airport during the course of the next five years through multiple grants.

Current Project: City of Nacogdoches. TxDOT CSJ No.: 1211NACOG. Scope: Provide engineering/design services to rehabilitate and mark Runway 18-36, Apron and stub TW, hangar access TWs, widen TW "Y" and install destination signs.

The DBE goal for the current project is 7%. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Expand terminal apron
2. Construct hangar access Taxiway
3. Install perimeter fencing
4. Upgrade lighting regulator
5. Install abbreviated ALS (ILS, GPS, NDB)
6. Install PAPI-4 Runway 18-36
7. Rehabilitate parallel Taxiway A to Runway 18-36
8. Rehabilitate Taxiways B and C
9. Construct access road from Hwy 7

10. Construct helipad
11. Terminal Area Development Plan
12. Construct new terminal building
13. Construct auto parking

The City of Nacogdoches reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "A.L. Mangham, Jr. Regional Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than 4:00 p.m. on January 10, 2012. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201105229

Joanne Wright
 Deputy General Counsel
 Texas Department of Transportation
 Filed: November 29, 2011



Public Notice - Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Texas Administrative Code, Title 43, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2013 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2013. The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

All entities and individuals on the mailing list will be contacted by mail sent out on January 9, 2012, and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 9, 2012, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 9, 2012, for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 9, 2012. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide*. If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 24, 2012. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The department is now accepting advertising four quarterly issues of the *Texas Events Calendar*, beginning with the Summer 2012 calendar. The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Events Calendar* includes festivals, art

exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The Summer 2012 calendar lists events scheduled for June, July, and August 2012. The Fall 2012 calendar lists September, October, and November 2012 events. The Winter 2012-2013 calendar lists December 2012, January 2013, and February 2013 events; and the Spring 2013 calendar lists events scheduled for March 2013, April 2013, and May 2013.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is November 14, 2011 for the Spring 2012 issue; February 13, 2012, for the Summer 2012 issue; May 14, 2012, for the Fall 2012 issue; August 13, 2012, for the Winter 2012-2013 issue; and November 15, 2012, for the Spring 2013 issue. The deadline for accepting materials for the *Texas Events Calendar* is November 28, 2011 for the Spring 2012 issue; February 27, 2012, for the Summer 2012 issue; May 28, 2012, for the Fall 2012 issue; August 27, 2012, for the Winter 2012-2013 issue; and November 29, 2012, for the Spring 2013 issue.

The department is now accepting advertising for all monthly 2012/2013 issues of *Texas Highways* magazine. *Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation,

recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas Accommodations Guide* is the state's official lodging guide and includes information on hotels/motels, condominiums, bed and breakfasts, cabin/guest homes, and guest ranches. This publication is distributed in the standard package sent to requestors seeking information about Texas and also is distributed through the 12 Travel Information Centers operated by the Texas Department of Transportation.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar*, *Texas Highways* magazine, and the *Texas Accommodations Guide* are included in this notice.

TEXAS STATE TRAVEL GUIDE

Year 2013 Rate Base: 900,000
Space Closing: October 3, 2012
Materials Due: October 10, 2012
First Distribution: January 2013

Advertising Rates

ROP:	Gross	Net*
Full Page	\$23,667	\$20,116
Two Thirds (2/3) Page	\$16,907	\$14,371
Half (1/2) Page	\$14,217	\$12,084
One Third (1/3) Page	\$ 8,526	\$ 7,247
One Sixth (1/6) Page	\$ 5,376	\$ 4,569
Premium Positions:		
Cover 2 (Inside Front)	\$34,125	\$29,006
Cover 3 (Inside Back)	\$31,773	\$27,007
Cover 4 (Back)	\$42,624	\$36,231
Spread (Inside Front Cover Inside Back Cover)	\$57,792	\$49,123

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Early Reservation Discount: Organizations reserving their space by Friday, August 3, 2012 will receive a 5% discount off the net space price.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar

Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar

Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

2013 advertisers will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2013. Advertisers committing to ½ page or greater will also receive two free section page banners during calendar year 2013.

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 10, 2012.

TEXAS EVENTS CALENDAR

Advertising Rates/Due Dates

Year 2012/2013 Rate Base: 65,000 Circulation: Spring, Summer, Fall,
Winter

Black/White	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	\$ 1,512	\$ 1,285	\$ 1,465	\$ 1,245	\$ 1,418	\$ 1,205
HALF PAGE	\$ 1,040	\$ 884	\$ 1,016	\$ 864	\$ 968	\$ 823
THIRD PAGE	\$ 756	\$ 643	\$ 733	\$ 623	\$ 685	\$ 582

4-Color	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	\$ 2,117	\$ 1,799	\$ 2,051	\$ 1,743	\$ 1,985	\$ 1,687
HALF PAGE	\$ 1,455	\$ 1,237	\$ 1,422	\$ 1,209	\$ 1,356	\$ 1,153
THIRD PAGE	\$ 1,058	\$ 900	\$ 1,025	\$ 871	\$ 959	\$ 815

COVERS (4-COLOR)	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
COVER 2	\$ 3,308	\$ 2,811	\$ 3,072	\$ 2,611	\$ 2,835	\$ 2,410
COVER 3	\$ 2,835	\$ 2,410	\$ 2,599	\$ 2,209	\$ 2,363	\$ 2,008
COVER 4	\$ 3,969	\$ 3,374	\$ 3,780	\$ 3,213	\$ 3,591	\$ 3,052

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

Issue Date

Summer 2012 (Jun, Jul, Aug-2012)
 Fall 2012 (Sep, Oct, Nov-2012)
 Winter 2012-13 (Dec-2012, Jan, Feb-2013)
 Spring 2013 (Mar, Apr, May-2013)

Space Closing

Feb. 13, 2012
 May 14, 2012
 Aug. 13, 2012
 Nov. 15, 2012

Materials Due

Feb. 27, 2012
 May 28, 2012
 Aug. 27, 2012
 Nov. 29, 2012

TEXAS HIGHWAYS MAGAZINE
Texas Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$7120	\$6764	\$6550	\$6337	\$6123	\$5910
2/3 Page	\$5880	\$5586	\$5410	\$5233	\$5057	\$4880
1/2 Page	\$4626	\$4395	\$4256	\$4117	\$3978	\$3840
1/3 Page	\$3326	\$3160	\$3060	\$2960	\$2860	\$2761
1/6 Page	\$1830	\$1739	\$1684	\$1629	\$1574	\$1519
Cover 2	\$9100	\$8645	\$8372	\$8099	\$7826	\$7553
Cover 3	\$8700	\$8265	\$8004	\$7743	\$7482	\$7221

Section Guides (Holiday, Product, and Destination): \$1300 per insertion

Commission: 15% to recognized agencies providing print ready materials.

Payment: Cash with order or net 30 from invoice date.

Space Deadline: 27th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2012 advertisers who spend a minimum of \$4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2012.

GO TEXAN discount: Go Texan members receive 20 percent off the appropriate rate, based on size and frequency.

Web Site Advertising

Home page banner: \$2,000/month (180 x 300 pixels) (up to 2 positions available each month)

Section page banners: \$300/mo (180 x 300 pixels), \$200/mo (180 x 150 pixels)

Marketplace listings: \$600/year

TEXAS HIGHWAYS MAGAZINE
National Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$11,867	\$11,273	\$10,917	\$10,562	\$10,205	\$9,850
2/3 Page	\$9,800	\$9,310	\$9,016	\$8,722	\$8,428	\$8,133
1/2 Page	\$7,710	\$7,325	\$7,093	\$6,682	\$6,630	\$6,400
1/3 Page	\$5,543	\$5,267	\$5,100	\$4,933	\$4,767	\$4,601
1/6 Page	\$3,050	\$2,898	\$2,807	\$2,715	\$2,623	\$2,532
Cover 2	\$15,167	\$14,408	\$13,953	\$13,498	\$13,043	\$12,588
Cover 3	\$14,500	\$13,775	\$13,340	\$12,905	\$12,470	\$12,035

Section Guides (Holiday, Product, and Destination): \$2,167 per insertion .

Commission: 15% to recognized agencies providing print ready materials.

Payment: Cash with order or net 30 from invoice date.

Space Deadline: 27th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2012 advertisers who spend a minimum of \$4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2012.

Web Site Advertising

Home page banner: \$3,333/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page banners free on a first come, first served basis. (up to 2 positions available each month)

Section page banners: \$500/mo (180 x 300 pixels), \$400/mo (180 x 150 pixels)

Marketplace: \$1,000/year

TEXAS ACCOMMODATIONS GUIDE

Listing Fees

Individual Property Listing Fee: \$225
Individual Property Listing Fee for TH&LA Members: \$125

Corporate Property Listing Fee: \$125
Corporate Property Listing Fee for TH&LA Members: \$115
Terms: Payee must pay on a single invoice with a minimum of 25 listings

TACVB Property Listing Fee: \$135
TACVB Property Listing Fee for properties that are TH&LA Members: \$125
Terms: Payee must pay on a single invoice with a minimum of 5 listings

Upgrades: All Cap \$25.00 2nd Color \$25.00

TRD-201105258
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 30, 2011



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-201105228
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 29, 2011



Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters related to the innovative financing and development of transportation projects, including the use of public/private partnerships, and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

The department currently has one law firm under contract for these services, but is seeking an additional firm to provide legal representation in these matters.

Description: The department is authorized under Transportation Code, Chapter 223, to construct, maintain, repair, operate, extend, or expand highway projects on the state highway system. The department is also authorized under Transportation Code, Chapter 91, to acquire, finance, construct, operate, and maintain rail facilities. Transportation Code, Chapter 223, Subchapter E, authorizes the department to enter into comprehensive development agreements with private entities for the acquisition, financing, design, construction, maintenance, and/or operation of department toll projects and certain other related transportation facilities.

The department intends to engage outside counsel to advise and represent the agency in connection with the development of transportation projects (including, without limitation, highway, toll, transit, rail, intermodal, and other related transportation facilities), comprehensive development agreements, and other public/private partnerships. Outside counsel will provide advice to the department in these areas, including providing legal advice and support on the terms of comprehensive development agreements and drafting, negotiating, and administering comprehensive development agreements, as well as legal issues involved in using public/private partnerships for the development of transportation projects, including procurement processes and innovative financing options and the implementation and structuring thereof. Outside counsel shall review legislation when requested by the department, recommend legislative action where appropriate, and assist with the drafting of legislation at the state and federal level. The department invites responses to this RFP from qualified firms for the provision of legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in the foregoing areas. Extensive prior experience in providing legal services related to public/private partnerships for the development of transportation or other infrastructure projects, and the innovative financing of those projects, is required.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal services in the matters described previously, the

names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) fee information (in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of potential conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Office of the Attorney General of the State of Texas.

Additional Information: The department is particularly concerned with issues pertaining to any potential conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts. If the respondent currently represents contractors or other private entities in relation to comprehensive development agreements or other public/private partnerships, respondent must disclose this information and address how any potential conflicts would be handled in the future.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General. Hourly rates for each partner, of counsel, and associate working on the department's matters may not to exceed \$500 per hour. Blended rates are not permitted.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposals," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 150 E. Riverside Drive, Austin, Texas 78704. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on February 7, 2012.

TRD-201105259
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 30, 2011



Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F, as promulgated pursuant to Senate Bill 1420 of the Regular Session of the 82nd Legislature, as enacted (enabling legislation), the Texas Department of Transportation (department) may

enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of \$50 million or more for each project. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register*. On November 17, 2011, the Texas Transportation Commission (commission) proposed for adoption new Subchapter I in Chapter 9 of Title 43, Texas Administrative Code, relating to design-build contracts (the "proposed rules"). The enabling legislation, as well as the proposed rules, if and when adopted, govern the submission and processing of qualifications submittals, provide for publication of notice that the department is requesting qualifications submittals, and set forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary in the request for qualifications. The commission has authorized the issuance of a request for qualifications to design, construct, and potentially perform capital maintenance on IH 30 from Sylvan Avenue to IH 35E and IH 35E from north of Eighth Street to the IH 30/IH 35E interchange in Dallas County (the Horseshoe project or project), through a design-build contract.

On October 27, 2011 in Minute Order 112874, the commission authorized the department to commence the procurement process for the Horseshoe project under the enabling legislation. This notice represents the next step in the process.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a design-build contract in response to a request for qualifications (RFQ). The department intends to evaluate any QS received and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a design-build contract. The department will accept for consideration any QS received in accordance with the enabling legislation, final rules, and the RFQ on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract for the project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: qualifications and experience and statement of technical approach. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on December 9, 2011. Copies of the RFQ will be available at the Texas Department of Transportation, 7600 Chevy Chase Dr., Austin, Texas 78752-1599 or on the following website: http://www.txdot.gov/project_information/projects/dallas/horseshoe/rfq.htm. QSs will be due by 3:00 p.m. on January 26, 2012 at the address specified in the RFQ.

TRD-201105230
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 29, 2011

