
TEXAS REGISTER

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Pages 1863 - 1958



*Jacquelynn Gonzalez
4th Grade*

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

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

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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 February 1, 2012

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2017, Emily A. Willeford of San Antonio (replacing John Steen, III of Houston who resigned).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2017, Donna Lord Black of Fulshear (Ms. Black is being reappointed).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2017, Jo Ann Campbell of Abilene (Ms. Campbell is being reappointed).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2017, Doris A. Couch of Burleson (replacing Narciso Escareno of Brownsville whose term expired).

Pursuant to SB 7, 82nd Legislature, First Called Session, designating Senator Jane Nelson as presiding officer of the Medicaid Reform Waiver Legislative Oversight Committee for a term at the pleasure of the Governor.

Appointments for February 2, 2012

Appointed to the Finance Commission of Texas for a term to expire February 1, 2018, Darby Ray Byrd, Sr. of Orange (Mr. Byrd is being reappointed).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2018, Victor E. Leal of Amarillo (replacing David Cibrian of San Antonio whose term expired).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2018, Hilliard Judge "Jay" Shands, III of Lufkin (Mr. Shands is being reappointed).

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2013, Jean L. Olinger of Childress (replacing Norberto Salinas of Mission who resigned).

Appointments for February 3, 2012

Appointed to the North Texas Tollway Authority Board of Directors for a term to expire August 31, 2013, William D. "Bill" Elliott of Ravenna (replacing Bob Shepard of Weatherford whose term expired).

Appointments for February 6, 2012

Appointed to the Public Safety Commission for a term to expire January 1, 2018, John Thomas Steen, Jr. of San Antonio (Mr. Steen is being reappointed).

Appointments for February 16, 2012

Pursuant to SB 1154, 82nd Legislature, Regular Session, appointed to the Task Force to Reduce Child Abuse and Neglect and Improve Child Welfare for a term at the pleasure of the Governor, Christopher S. Greeley of Houston.

Pursuant to SB 1154, 82nd Legislature, Regular Session, appointed to the Task Force to Reduce Child Abuse and Neglect and Improve Child Welfare for a term at the pleasure of the Governor, Adriana Benavides Maddox of Laredo.

Appointed to the Texas Holocaust and Genocide Commission for a term to expire February 1, 2015, Gregg S. Philipson of Austin (replacing Laura McCarthy of Richardson who resigned).

Appointed to the Texas Poet Laureate, State Musician and State Artists Committee for a term to expire October 1, 2013, Ted L. Stewart of Austin (replacing Bill Schneider of Austin whose term expired).

Appointed to the Texas County and District Retirement System for a term to expire December 31, 2017, Herman "Chuck" Cazalas of Corpus Christi (reappointed).

Appointed to the Texas County and District Retirement System for a term to expire December 31, 2017, Eddie J. Miles, Jr. of Live Oak (reappointed).

Appointed to the Texas County and District Retirement System for a term to expire December 31, 2017, Dorye K. "Kristy" Roe of Bryan (reappointed).

Appointments for February 23, 2012

Appointed as Judge of the 1st Judicial District, Jasper, Newton, Sabine, and San Augustine Counties, effective March 1, 2012, for a term until the next General Election and until his successor shall be duly elected and qualified, Craig M. Mixson of Buna. Mr. Mixson is replacing Judge Gary Gatlin who resigned.

Appointed as presiding officer of the Cameron County Regional Mobility Authority for a term to expire February 1, 2014, David E. Allex of Harlingen (Mr. Allex is being reappointed).

Appointed to the Midwestern State University Board of Regents, effective February 25, 2012, for a term to expire February 25, 2018, Fenton Lynwood Givens of Plano (Dr. Givens is being reappointed).

Appointed to the Midwestern State University Board of Regents, effective February 25, 2012, for a term to expire February 25, 2018, Charles J. "Jeff" Gregg of Seymour (replacing Carol Gunn of Graford whose term expired).

Appointed to the Midwestern State University Board of Regents, effective February 25, 2012, for a term to expire February 25, 2018, Samuel M. Sanchez of Fort Worth (Mr. Sanchez is being reappointed).

Appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2014, Elizabeth "Christy" Jack of Fort Worth (reappointed).

Appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2014, Leonardo "Leo" Longoria of McAllen (reappointed).

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2013, Kyle M. Jones of Marble Falls (Mr. Jones is being reappointed).

Appointed as presiding officer of the Grayson County Regional Mobility Authority for a term to expire February 1, 2014, Will Rich Hubbard, Jr. of Tioga (Mr. Hubbard is being reappointed).

Appointed as presiding officer of the North East Texas Regional Mobility Authority for a term to expire February 1, 2014, Linda Ryan Thomas of Longview (Mr. Thomas is being reappointed).

Designating Mary Durham as presiding officer of the Texas Council for Developmental Disabilities for a term at the pleasure of the Governor. Ms. Durham is replacing Brenda Coleman-Beattie of Austin as presiding officer.

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2015, Scott McAvoy of Cedar Park (replacing Deneesa Rasmussen of Arlington who resigned).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2017, David J. Taylor of El Paso (replacing Christy Kelley of Humble who resigned).

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2015, J. Mark McWatters of Dallas (replacing C. Kent Conine of Dallas who resigned).

Appointed to be the Inspector General for Health and Human Services for a term to expire February 1, 2013, Douglas C. Wilson of Pflugerville (Mr. Wilson is being reappointed).

Appointments for February 28, 2012

Appointed as presiding officer of the Hidalgo County Regional Mobility Authority for a term to expire February 1, 2014, Dennis Bureson of Mission (Mr. Bureson is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2015, Manuela "Mamie" Salazar-Harper of El Paso (replacing Paul Martinez of Sonora who resigned).

Appointments for February 29, 2012

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, Joel Tribble Allison of Dallas.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, Michael Ted Haynes of Sachse

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, Robyn M. Jacobson of Richmond.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, John C. Joe of Houston.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, Beverly B. Nuckols of New Braunfels.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, Thomas J. Quirk of Dallas.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2013, Ben G. Raimer of Galveston.

Mr. Raimer will serve as presiding officer of the board for a term at the pleasure of the Governor.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Steven M. Berkowitz of Austin.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Patrick M. Carter of Houston.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Alexia Green of Ransom Canyon.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Ronald T. Luke of Austin.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Elena L. Marin of Brownsville.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Alan B. Stevens of Belton.

Pursuant to SB 7, 82nd Legislature, 1st Called Session, appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Susan M. Strate of Wichita Falls.

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2014, Dewey "Mike" Cox of Driftwood (Mr. Cox is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2014, Garry E. Eoff of Brownwood (Mr. Eoff is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2014, Daniel Griffith, II of Pflugerville (Corporal Griffith is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2014, Jason R. Marlin of Coppell (replacing Stephen Raley of Lufkin whose term expire).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2014, Dawn DuBose Randle of Houston (Ms. Randle is being reappointed).

Rick Perry, Governor

TRD-201201280



Proclamation 41-3291

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on December 21, 2010, as extreme fire hazard posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, high frontal winds and dry conditions continue to fuel fire hazards that create a threat of disaster for the people of Texas; and

WHEREAS, the state of disaster includes the counties of Andrews, Armstrong, Bailey, Bandera, Borden, Brewster, Briscoe, Brown, Callahan, Carson, Castro, Childress, Cochran, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Culberson,

Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jones, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Val Verde, Ward, Wheeler, Winkler and Yoakum;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 26th day of January, 2012.

Rick Perry, Governor

TRD-201201286



Proclamation 41-3292

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, these exceptional drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes all 254 counties in the State of Texas;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 26th day of January, 2012.

Rick Perry, Governor

TRD-201201287



Proclamation 41-3293

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby amend the proclamation issued by me on December 7, 2009, which provided for the administration of the qualified Hurricane Ike disaster area bond program and naming priorities for the designation of such bonds.

WHEREAS, Hurricane Ike inflicted serious damage on the coastal region of Texas on September 13, 2008; and

WHEREAS, on October 3, 2008, the President of the United States signed into law the Heartland Disaster Tax Relief Act of 2008 (the "Act"), which included changes to the federal tax law designed to provide economic relief to the Hurricane Ike disaster area; and

WHEREAS, in accordance with the Act, the Hurricane Ike disaster area includes the following 34 Texas counties: Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller, and Washington; and

WHEREAS, the Act allows for the issuance of certain tax exempt, qualified Hurricane Ike disaster area bonds to provide financing in the Hurricane Ike disaster area, through December 31, 2012; and

WHEREAS, the Act provides that the Governor of the State of Texas shall designate qualified Hurricane Ike disaster area bonds on the basis of providing assistance to areas in the order in which such assistance is most needed; and

WHEREAS, the Act provides that the maximum aggregate face amount of such bonds that may be designated shall not exceed the product of \$2,000 multiplied by the portion of the population that is in the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange (as determined on the basis of the most recent census estimate of resident population released by the U.S. Census Bureau before September 13, 2008), which is a total of \$1,863,270,000; and

WHEREAS, a portion of such bond authority is unencumbered, waived, or returned to the state and therefore remains available to provide assistance to the areas affected by Hurricane Ike; and

WHEREAS, the legislature has authorized the Bond Review Board in Section 1372.101(b) of the Texas Government Code to administer the qualified Hurricane Ike disaster area bond program established by the governor.

BE IT RESOLVED, I, Rick Perry, Governor of the State of Texas, hereby direct that any qualified Hurricane Ike disaster area bonding authority that is unencumbered, waived, or by any means returned to the state shall be made available to qualified Hurricane Ike disaster area bond program applicants located in any of the 34 Texas counties listed above.

BE IT FURTHER RESOLVED, the principal amount of any such bonds designated for a single applicant shall be no less than \$10,000,000; and

BE IT FURTHER RESOLVED, the Bond Review Board shall, under the direction of the Office of the Governor, administer the state's qualified Hurricane Ike disaster area bond program; and

BE IT FURTHER RESOLVED, as part of its administration of the program, the Bond Review Board shall maintain the official record of the designations and issuances of all qualified Hurricane Ike disaster area bonds; and

BE IT FURTHER RESOLVED, eligible issuers of such bonds shall complete and submit to the Bond Review Board an official application to the Office of the Governor for designation of the bonds (and, at the election of the applicant, for designation of a person to use the property to be financed as carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss attributable to Hurricane Ike) in the form approved by the Office of the Governor and available at the Bond Review Board, together with a \$1,000 application fee; and

BE IT FURTHER RESOLVED, the application shall include a letter of bond counsel to the effect that interest on the bonds would not be excluded from gross income for federal income tax purposes unless the bonds receive the requested designation(s) and, if the requested designation(s) are made, bond counsel expects to be able to render an opinion that the bonds and the project comply with the requirements of the Act and applicable state law; and

BE IT FURTHER RESOLVED, applicants are subject to requests from the Office of the Governor or the Bond Review Board for additional information related to an application; and

BE IT FURTHER RESOLVED, following application to the Bond Review Board, the Office of the Governor shall make designations on a case-by-case basis to ensure that each project is an appropriate use of funds under the Act; and

BE IT FURTHER RESOLVED, once an applicant receives a designation of bonds as qualified Hurricane Ike disaster area bonds, the period for issuing such bonds is within 120 days after the date of designation or such longer period approved by the Office of the Governor (the "Designation Period"); and

BE IT FURTHER RESOLVED if such bonds are not issued within the Designation Period, the designation is deemed waived, and the amount of the designation automatically becomes eligible for new designation in accordance with the program requirements; and

BE IT FURTHER RESOLVED, within five days after such bonds are issued, the applicant shall submit to the Bond Review Board a certification, in a form approved by the Office of the Governor and available from the Bond Review Board, of the principal amount of such bonds that have been issued, and the applicant shall promptly notify the Bond Review Board of any abandonment of its intention to issue such bonds and release its designation for such bonds; and

BE IT FURTHER RESOLVED, my December 7, 2009, proclamation superseded the provisions of my March 17, 2009, proclamation, designating priorities of the utilization of qualified Hurricane Ike disaster area bonds; however, the provisions of my March 17, 2009, proclamation, designating bonds as Hurricane disaster area bonds (and the designation made thereby) are hereby saved and shall remain unaffected by my December 7, 2009, proclamation and this proclamation.

BE IT FURTHER RESOLVED, I reserve the right, as necessary to benefit the citizens of the Hurricane Ike disaster area, to amend any and all of the resolutions of this proclamation.

IN TESTIMONY WHEREOF, I have hereunto 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 17th day of February, 2012.

Rick Perry, Governor

TRD-201201288



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-1042-GA

Requestor:

The Honorable Burt R. Solomons

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of the Open Meetings Act, chapter 551, Government Code, to a coordinated county transportation authority created under

chapter 460, Transportation Code, and to its committees (RQ-1042-GA)

Briefs requested by April 16, 2012

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

TRD-201201305

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: March 6, 2012

◆ ◆ ◆

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

SUBCHAPTER H. CRIME STOPPERS

PROGRAM CERTIFICATION

DIVISION 1. CRIME STOPPERS PROGRAM

CERTIFICATION

1 TAC §3.9017, §3.9019

The Texas Crime Stoppers Council (Council) proposes the amendment of Title 1, Part 1, Chapter 3, Subchapter H, Division 1, §3.9017 and §3.9019.

The proposed amendments to §3.9017 and §3.9019 correct typographical errors in the current text by changing the references in §3.9017(6) and §3.9019(6) from "§414.01(d)" to "§414.010(d)."

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

Ms. Bosarge has also determined that for the first five-year period the proposed amendments are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or small businesses for complying with the proposed rules.

Comments on the proposed amendments may be submitted to Christina Grady, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919; cgrady@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment of these rules is proposed under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.9017. *Mergers of Certified Organizations.*

If a certified crime stoppers organization agrees with another certified crime stoppers organization to merge and form a multi-county or

multi-jurisdictional (i.e., county and city) organization, the merged organization must apply for continuing certification, and the following procedures must be followed:

(1) - (5) (No change.)

(6) The merged organization's "Excess Funds Account," as defined in §414.010(d) [~~§414.01(d)~~] of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Account." Three years from the merged organization's certification date, the merged organization may establish an "Excess Funds Account" in accordance with §414.010(d) [~~§414.01(d)~~] of the Texas Government Code.

(7) (No change.)

§3.9019. *Mergers of Non-certified Organizations to Certified Organizations.*

If a certified crime stoppers organization agrees with a non-certified crime stoppers organization to merge and form a multi-county or multi-jurisdictional (i.e., county and city) organization, the merged organization must apply for certification, and the following procedures must be followed:

(1) - (5) (No change.)

(6) The merged organization's "Excess Funds Account," as defined in §414.010(d) [~~§414.01(d)~~] of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Account." Three years from the merged organization's certification date, the merged organization may establish an "Excess Funds Account" in accordance with §414.010(d) [~~§414.01(d)~~] of the Texas Government Code.

(7) (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 February 29, 2012.

TRD-201201238

David Zimmerman

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: April 15, 2012

For further information, please call: (512) 463-1919



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING ENGLISH LANGUAGE LEARNERS

19 TAC §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1225, 89.1227, 89.1228, 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, 89.1265, 89.1267, 89.1269

The Texas Education Agency (TEA) proposes amendments to §§89.1201, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1225, 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265 and new §§89.1203, 89.1227, 89.1228, 89.1267, and 89.1269, concerning the state plan for educating limited English proficient students. The sections establish rules to guide the implementation of bilingual education and special language programs. The proposed revisions would clarify that bilingual education and English as a second language (ESL) programs must be selected from certain program models in alignment with statute, amend and clarify provisions relating to the language proficiency assessment committee in alignment with statute, and clarify requirements for serving students who are English language learners and also qualify for special education services. Rules related to dual language instruction would be incorporated into this subchapter to clarify the relationship between bilingual education and dual language instruction. The term limited English proficient would be changed throughout the subchapter to align with current terminology. In addition, technical changes to correct cross-references to other administrative rules would be made.

In accordance with the Texas Education Code (TEC), Chapter 29, Subchapter B, Bilingual Education and Special Language Programs, the commissioner exercised rulemaking authority establishing rules to guide the implementation of bilingual education and special language programs. The commissioner's rules in 19 TAC Chapter 89, Subchapter BB, adopted to be effective September 1, 1996, and amended April 18, 2002, and September 17, 2007, establish the policy that every student in the state who has a home language other than English and who is identified as limited English proficient shall be provided a full opportunity to participate in a bilingual education or ESL program. These rules outline the requirements of the bilingual education and ESL programs, including program content and design, home language survey, the language proficiency assessment committee (LPAC), testing and classification, facilities, parental authority and responsibility, staffing and staff development, required summer school programs, and evaluation. During the recent statutorily required review of rules in 19 TAC Chapter 89, staff identified the need to update rules.

The proposed revisions to 19 TAC Chapter 89, Subchapter BB, include the following.

Section 89.1201, Policy, would be amended to update terminology.

Proposed new §89.1203, Definitions, would be added to define terms used in this subchapter.

Section 89.1205, Required Bilingual Education and English as a Second Language Programs, would be amended to clarify that

bilingual and ESL programs must be selected from the program models outlined in statute and explained in §89.1210.

Section 89.1207, Exceptions and Waivers, would be amended to change the deadline for exceptions and waivers from October 1 of each year to November 1 of each year to accommodate a later school start date required by statute.

Section 89.1210, Program Content and Design, would be amended to add descriptions of the various bilingual education and ESL program models to align with requirements of Senate Bill (SB) 1871, 80th Texas Legislature, 2007.

Section 89.1215, Home Language Survey, would be amended with minor, technical edits.

Section 89.1220, Language Proficiency Assessment Committee, would be amended to add a campus administrator to the composition of the LPAC to align with requirements in statute. Additional changes would clarify documentation requirements for English language learners, more appropriately reference norm-referenced standardized achievement instruments, and specify that four weeks is equivalent to 20 school days. Additionally, the section would be amended to permit a district to identify, exit, or place a student in a program without written approval from the student's parent or guardian under certain circumstances.

Section 89.1225, Testing and Classification of Students, would be amended to clarify that tests used for identification, exit, and placement of students must be re-normed every eight years to align with timelines for requirements of similar tests included in statute.

Proposed new §89.1227, Minimum Requirements for Dual Language Immersion Program Model, and proposed new §89.1228, Dual Language Immersion Program Model Implementation, would incorporate language from 19 TAC Chapter 89, Subchapter FF, which is proposed for repeal, to clarify the relationship between bilingual education and dual language instruction.

Section 89.1230, Eligible Students with Disabilities, would be amended to clarify the requirements for serving students who are English language learners and who also qualify for special education services.

Section 89.1233, Participation of Nonlimited English Proficiency Students, would be amended to update terminology. The section title would also be updated.

Section 89.1235, Facilities, would be amended to reference facilities instead of schools to address the use of newcomer centers. Amendments in this section would also clarify the limit on the amount of time a student may be housed at a newcomer center.

Section 89.1240, Parental Authority and Responsibility, would be amended to update terminology.

Section 89.1245, Staffing and Staff Development, would be amended to update the reference to the rule regarding exceptions and waivers and change the application deadline to match language in §89.1207.

Section 89.1250, Required Summer School Programs, would be amended to clarify eligibility for students to enroll in the summer school program.

Section 89.1265, Evaluation, would be amended to delete a reference to a section of Chapter 89 that no longer exists.

Proposed new §89.1267, Standards for Evaluation of Dual Language Immersion Program Models, and proposed new §89.1269, General Standards for Recognition of Dual Language Immersion Program Models, would incorporate language from 19 TAC Chapter 89, Subchapter FF, which is proposed for repeal, to clarify the relationship between bilingual education and dual language instruction.

In addition, the subchapter title would change to "Commissioner's Rules Concerning State Plan for Educating English Language Learners."

The proposed rule actions would have no new procedural or reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule actions.

Ms. Givens has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections would be further clarification of the rules for serving English language learners. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

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 March 16, 2012, and ends April 16, 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 March 16, 2012.

The amendments and new sections are proposed under the Texas Education Code (TEC), §29.056, which authorizes the agency to establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program; the TEC, §29.053, which authorizes the agency to establish a procedure for identifying school districts that are required to offer bilingual education and special language programs in accordance with the TEC, Chapter 29, Subchapter B; and the TEC, §29.066, which requires the commissioner to adopt rules to classify bilingual education and special language programs. In addition, the TEC, §29.051, addresses state policy relating to bilingual education and special language programs. The TEC, §29.054, addresses exceptions to bilingual education programs. The TEC, §29.055, addresses program content and method of instruction for bilingual education and English as a second language programs. The TEC, §29.0561, addresses evaluation and reenrollment of exited bilingual students. The TEC, §29.057, addresses facilities and classes for bilingual education and special language programs. The TEC, §29.058, addresses enrollment of students who do not have limited

English proficiency. The TEC, §29.059, addresses cooperation among districts to provide bilingual education and special language programs. The TEC, §29.060, addresses preschool, summer school, and extended time programs for bilingual and special language programs. The TEC, §29.063, addresses language proficiency assessment committees. The TEC, §29.064, addresses appeals by parents of students enrolled in bilingual education or special language programs.

The amendments and new sections implement the Texas Education Code, §§29.051, 29.053-29.060, 29.063, 29.064, and 29.066.

§89.1201. Policy.

(a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an English language learner [~~limited English proficient~~] shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC [Texas Education Code], §1.002(a), each school district shall:

(1) identify English language learners [~~limited English proficient students~~] based on criteria established by the state;

(2) provide bilingual education and ESL [~~English as a second language~~] programs, as integral parts of the regular program as described in the TEC [Texas Education Code], §4.002;

(3) seek certified teaching personnel to ensure that English language learners [~~limited English proficient students~~] are afforded full opportunity to master the essential knowledge and skills [~~and knowledge~~] required by the state; and

(4) assess achievement for essential knowledge and skills [~~and knowledge~~] in accordance with the TEC [Texas Education Code], Chapter 39, to ensure accountability for English language learners [~~limited English proficient students~~] and the schools that serve them.

(b) The goal of bilingual education programs shall be to enable English language learners [~~limited English proficient students~~] to become competent in listening, [~~the comprehension,~~] speaking, reading, and writing in [~~composition of~~] the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners [~~limited English proficient students~~] to participate equitably in school.

(c) The goal of ESL [~~English as a second language~~] programs shall be to enable English language learners [~~limited English proficient students~~] to become competent in listening, [~~the comprehension,~~] speaking, reading, and writing in [~~composition of~~] the English language through the integrated use of second language methods. The ESL [~~English as a second language~~] program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners [~~limited English proficient students~~] to participate equitably in school.

(d) Bilingual education and ESL [~~English as a second language~~] programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of English language learners [~~limited English proficient students~~]. The basic curriculum content of the programs shall be based on the essential knowledge and skills [~~and knowledge~~] required by the state.

§89.1203. Definitions.

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

(1) English language learner--A person who is in the process of acquiring English and has another language as the first native language. The terms English language learner and limited English proficient student are used interchangeably.

(2) Dual language immersion--An educational approach in which students learn two languages in an instructional setting that integrates subject content presented in English and another language. Models vary depending on the amount of each language used for instruction at each grade level. The program must be based on instruction that adds to the student's first language. The implementation of a dual language immersion program model is optional.

(3) School district--For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

§89.1205. Required Bilingual Education and English as a Second Language Programs.

(a) Each school district that ~~which~~ has an enrollment of 20 or more English language learners [~~limited English proficient students~~] in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the English language learners [~~limited English proficient students~~] in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.

(b) A school district shall provide a bilingual education program by offering ~~a~~ dual language instruction ~~program~~ in prekindergarten through the elementary grades, using one of the four bilingual program models ~~as~~ described in §89.1210 of this title (relating to Program Content and Design).

(c) School districts [~~Districts~~] are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section.

(d) All English language learners [~~limited English proficient students~~] for whom a school district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.

(e) A school district shall provide ~~an~~ English as a second language instruction ~~program~~ by offering an English as a second language program using one of the two models ~~as~~ described in §89.1210 of this title [~~relating to Program Content and Design~~].

(f) School districts [~~Districts~~] may join with other school districts to provide bilingual education or English as a second language programs.

§89.1207. Exceptions and Waivers.

(a) Bilingual education program.

(1) Exceptions. A school district that is unable to provide a bilingual education program as required by §89.1205(a) of this title (relating to Required Bilingual Education and English as a Second Language Programs) shall request from the commissioner of education an exception to the bilingual education program and the approval of an alternative program. The approval of an exception to the bilingual education program shall be valid only during the school year for which

it was granted. A request for a bilingual education program exception must be submitted by November [~~October~~] 1 and shall include:

(A) a statement of the reasons the school district is unable to offer the bilingual education program with supporting documentation;

(B) a description of the proposed alternative modified bilingual education or intensive English as a second language programs designed to meet the affective, linguistic, and cognitive needs of the English language learners [~~limited English proficient students~~], including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements);

(C) an acknowledgement [~~assurance~~] that certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the English language learners [~~limited English proficient students~~] with beginning levels of English proficiency are served on a priority basis;

(D) a description of the training program [~~which~~] the school district will provide to improve the skills of the certified teachers that are assigned to implement the proposed alternative program[,] and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training program; and

(E) a description of the actions the school district will take to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year.

(2) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner [~~of education~~] if the requesting school district:

(A) meets or exceeds the state average for English language learner [~~limited English proficient student~~] performance on the required state assessments;

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(E) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or

(C) reduces by 25% the number of teachers under exception for bilingual Spanish programs when compared to the number of exceptions granted the previous year.

(3) Denial of exceptions. A school district denied a bilingual education program exception must submit to the commissioner [~~of education~~] a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A school district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the Texas Education Code (TEC) [~~TEC~~], §39.057 [~~§39.075~~], if a school district:

(A) is denied a bilingual education program exception for more than three consecutive years; or

(B) is granted an exception based on meeting or exceeding the state average for English language learner [~~limited English pro-~~

icient student] performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.

(6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102 [§39.13].

(b) English as a second language program.

(1) Waivers. A school district that is unable to provide an English as a second language program as required by §89.1205(d) of this title because of an insufficient number of certified teachers shall request from the commissioner [of education] a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for English language learners [limited English proficient students]. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an English as a second language program waiver must be submitted by November [October] 1 and shall include:

(A) a statement of the reasons the school district is unable to provide a sufficient number of certified teachers to offer the English as a second language program;

(B) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the English language learners [limited English proficient students], including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title;

(C) an assurance that certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus[;] and, if needed, [on the basis of need for] secondary campuses, to ensure that the linguistic and academic needs of the English language learners [limited English proficient students] with the lower levels of English proficiency are served on a priority basis;

(D) the name of each teacher not on permit who is assigned to implement the English as a second language program and for each teacher under a waiver, the estimated date for the completion of the English as a second language supplemental certification [for each teacher under a waiver], which must be completed by the end of the school year for which the waiver was requested;

(E) a description of the training program that [which] the school district will provide to improve the skills of the certified teachers that are assigned to implement the proposed English as a second language program[;] and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training; and

(F) a description of the actions the school district will take to ensure that the program required under §89.1205(d) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent waivers.

(2) Approval of waivers. English as a second language waivers will be granted by the commissioner [of education] if the requesting school district:

(A) meets or exceeds the state average for English language learner [limited English proficient student] performance on the required state assessments; or

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) [(1)(D)] of this subsection submitted the previous year and approved by the TEA.

(3) Denial of waivers. A school district denied an English as a second language program waiver must submit to the commissioner [of education] a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A school district denied an English as a second language waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.057 [§39.075], if a school district:

(A) is denied an English as a second language waiver for more than three consecutive years; or

(B) is granted a waiver based on meeting or exceeding the state average for English language learner [limited English proficient student] performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.

(6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102 [§39.13].

§89.1210. *Program Content and Design.*

(a) Each school district required to offer a bilingual education or English as a second language program shall provide each English language learner [limited English proficient student] the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall modify the instruction, pacing, and materials to ensure that English language learners [limited English proficient students] have a full opportunity to master the essential knowledge and skills of the required curriculum. Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their home language or in English for each content area.

(b) The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The amount of instruction in each language within the bilingual education program shall be commensurate with the students' level of proficiency in each language and their level of academic achievement. The students' level of language proficiency and academic achievement shall be designated by the language proficiency assessment committee. The Texas Education Agency (TEA) shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in each language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.

(c) The bilingual education program shall be an integral part of the regular educational program required under Chapter 74 of this title (relating to Curriculum Requirements). In bilingual education programs using Spanish and English as languages of instruction, school districts shall use state-adopted English and Spanish instructional materials and supplementary materials as curriculum tools to enhance the learning process; in addition, school districts may use other curriculum adaptations that [which] have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of English language learners [limited English proficient students] as follows.

(1) Affective. English language learners [Limited English proficient students] shall be provided instruction in their home language to introduce basic concepts of the school environment, and instruction both in their home language and in English, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.

(2) Linguistic. English language learners [Limited English proficient students] shall be provided instruction in the skills of listening, [comprehension,] speaking, reading, and writing [composition] both in their home language and in English. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order [higher order] thinking skills in all subjects.

(3) Cognitive. English language learners [Limited English proficient students] shall be provided instruction in language arts, mathematics, science, [health,] and social studies both in their home language and in English. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order [higher order] thinking skills in all subjects.

(d) The bilingual education program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.

(1) Transitional bilingual/early exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. This model provides instruction in literacy and academic content areas through the medium of the student's first language, along with instruction in English oral and academic language development. Non-academic subjects such as art, music, and physical education may also be taught in English. Exiting of a student to an all-English program of instruction will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title (relating to Testing and Classification of Students) may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

(2) Transitional bilingual/late exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. Academic growth is accelerated through cognitively challenging academic work in the student's first language along with meaningful academic content taught through the student's second language, English. The goal is to promote high levels of academic achievement and full academic language proficiency in the student's first language and English. A student enrolled in a transitional bilingual/late exit program is eligible to exit the program no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

(3) Dual language immersion/two-way is a biliteracy program model that integrates students proficient in English and students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student identified as limited English proficient to English-only instruction. Instruction is provided to both native English speakers and native

speakers of another language in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:

(A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;

(B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees. Whenever possible, 50% of the students in a program should be dominant English speakers and 50% of the students should be native speakers of the other language at the beginning of the program; and

(C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.

(4) Dual language immersion/one-way is a biliteracy program model that serves only students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student to English-only instruction. Instruction is provided to English language learners in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:

(A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;

(B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees. Whenever possible, 50% of the students in a program should be dominant English speakers and 50% of the students should be native speakers of the other language at the beginning of the program; and

(C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.

(e) [(d)] English as a second language programs shall be intensive programs of instruction designed to develop proficiency in listening, [the comprehension,] speaking, reading, and writing [composition] in the English language. Instruction in English as a second language shall be commensurate with the student's level of English proficiency and his or her level of academic achievement. In prekindergarten through Grade 8, instruction in English as a second language may vary from the amount of time accorded to instruction in English language arts in the general education [regular] program for [nonlimited] English proficient students to a full-time instructional setting using [utilizing] second language methods. In high school, the English as a second language program shall be consistent with graduation requirements under Chapter 74 of this title [(relating to Curriculum Requirements)]. The language proficiency assessment committee may recommend appropriate services that may include content courses provided through sheltered instructional approaches

by trained teachers, enrollment in English as a second language courses, additional state elective English courses, and special assistance provided through locally determined programs.

(f) [(e)] The English as a second language program shall be an integral part of the regular educational program required under Chapter 74 of this title [(relating to Curriculum Requirements)]. School districts [Districts] shall use state-adopted English as a second language instructional materials and supplementary materials as curriculum tools. In addition, school districts may use other curriculum adaptations that [which] have been developed. The school district shall provide for on-going coordination between the English as a second language program and the regular educational program. The English as a second language program shall address the affective, linguistic, and cognitive needs of English language learners [limited English proficient students] as follows.

(1) Affective. English language learners [limited English proficient students] shall be provided instruction using second language methods in English to introduce basic concepts of the school environment, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.

(2) Linguistic. English language learners [limited English proficient students] shall be provided intensive instruction to develop proficiency in listening, [the comprehension,] speaking, reading, and writing in [composition of] the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order [higher order] thinking skills.

(3) Cognitive. English language learners [limited English proficient students] shall be provided instruction in English in language arts, mathematics, science, [health,] and social studies using second language methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order [higher order] thinking skills.

(g) The English as a second language program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.

(1) An English as a second language/content-based program model is an English program that serves only students identified as English language learners by providing a full-time teacher certified under the Texas Education Code (TEC), §29.061(c), to provide supplementary instruction for all content area instruction. The program integrates English as a second language instruction with subject matter instruction that focuses not only on learning a second language, but using that language as a medium to learn mathematics, science, social studies, or other academic subjects. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

(2) An English as a second language/pull-out program model is an English program that serves only students identified as English language learners by providing a part-time teacher certified under the TEC, §29.061(c), to provide English language arts instruction exclusively, while the student remains in a mainstream

instructional arrangement in the remaining content areas. Instruction may be provided by the English as a second language teacher in a pull-out or inclusionary delivery model. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

(h) [(f)] Except in the courses specified in subsection (i) [(g)] of this section, English as a second language strategies, which may involve the use of the students' home language, may be provided in any of the courses or electives required for promotion or graduation to assist the English language learners [limited English proficient students] to master the essential knowledge and skills for the required subject(s). The use of English as a second language strategies shall not impede the awarding of credit toward meeting promotion or graduation requirements.

(i) [(g)] In subjects such as art, music, and physical education, the English language learners [limited English proficient students] shall participate with their English-speaking peers in regular classes provided in the subjects. The school district shall ensure that students enrolled in bilingual education and English as a second language programs have a meaningful opportunity to participate with other students in all extracurricular activities.

(j) [(h)] The required bilingual education or English as a second language programs shall be provided to every English language learner [limited English proficient student] with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title [(relating to Testing and Classification of Students)] or graduates from high school.

§89.1215. *Home Language Survey.*

(a) School districts [Districts] shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the school district[-] and to students previously enrolled who were not surveyed in the past. School districts [Districts] shall require that the survey be signed by the student's parent or guardian for each student [students] in [grades] prekindergarten through Grade 8, or by the student in Grades 9-12. The original copy of the survey shall be kept in the student's permanent record.

(b) The home language survey shall be administered in English and Spanish; for students of other language groups, the home language survey shall be translated into the home language whenever possible. The home language survey shall contain the following questions.

(1) "What language is spoken in your home most of the time?"

(2) "What language does your child [(ðə ʃəʊt)] speak most of the time?"

(c) Additional information may be collected by the school district and recorded on the home language survey.

(d) The home language survey shall be used to establish the student's language classification for determining whether the school district is required to provide a bilingual education or English as a second language program. If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students).

§89.1220. *Language Proficiency Assessment Committee.*

(a) School districts [~~Districts~~] shall by local board policy establish and operate a language proficiency assessment committee. The school district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).

(b) In school districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code (TEC), §29.063. If the school district does not have an individual in one or more of the school job classifications required, the school district shall designate another professional staff member to serve on the language proficiency assessment committee. The school district may add other members to the committee in any of the required categories.

(c) In school districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel, a campus administrator, and a parent of an English language learner [a limited English proficient student] participating in the program designated by the school district.

(d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.

(e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within 20 school days [four weeks] of the enrollment of English language learners [limited English proficient students].

(f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

(g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all English language learners [limited English proficient students] identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:

(1) designate the language proficiency level of each English language learner [limited English proficient student] in accordance with the guidelines issued pursuant to §89.1210(b) and (e) [(d)] of this title (relating to Program Content and Design);

(2) designate the level of academic achievement of each English language learner [limited English proficient student];

(3) designate, subject to parental approval, the initial instructional placement of each English language learner [limited English proficient student] in the required program;

(4) facilitate the participation of English language learners [limited English proficient students] in other special programs for which they are eligible provided by the school district with either state or federal funds; and

(5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title [(relating to Testing and Classification of Students)], and recommend their exit from the bilingual education or English as a second language program.

(h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each English language

learner [limited English proficient student] as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners [Limited English Proficient Students] in State Assessments). [The assessment options shall be:]

{(1) administration of the English version criterion-referenced test;}

{(2) administration of the Spanish version criterion-referenced test; or}

{(3) for certain immigrant students, exemption from the criterion-referenced test.}

{(i) In determining the appropriate assessment option, the language proficiency assessment committee shall consider the following criteria for each student:}

{(1) academic program participation (bilingual education or English as a second language) and language of instruction;}

{(2) language proficiency, including literacy, in English and/or Spanish;}

{(3) number of years enrolled in U.S. schools;}

{(4) previous testing history;}

{(5) level achieved on the state English language proficiency assessment in reading;}

{(6) consecutive years of residence outside of the 50 U.S. states; and}

{(7) schooling outside the U.S.}

(i) [(j)] The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as an English language learner [limited English proficient] and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.

(j) [(k)] Pending parent approval of an English language learner's [a limited English proficient student's] entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the school district shall place the student in the recommended program, but may count only English language learners [limited English proficient students] with parental approval for the bilingual education allotment.

(k) [(l)] The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program during the first two years after exiting in accordance with the TEC [Texas Education Code], §29.0561.

(l) [(m)] The student's permanent record shall contain documentation of all actions impacting the English language learner [limited English proficient student]. [This documentation shall include:]

(1) Documentation shall include:

(A) [(1)] the identification of the student as an English language learner [limited English proficient];

(B) [(2)] the designation of the student's level of language proficiency;

(C) [(3)] the recommendation of program placement;

(D) [(4)] parental approval of entry or placement into the program;

(E) [(5)] the dates of entry into, and placement within, the program;

(F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;

(G) additional instructional interventions provided to students to ensure adequate yearly progress;

[(6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;]

(H) [(7)] the date of exit from the program and parental approval [parent notification]; and

(I) [(8)] the results of monitoring for academic success, including students formerly classified as English language learners [limited English proficient], as required under the TEC [Texas Education Code], §29.063(c)(4).

(2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.

(m) A school district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:

(1) the student is 18 years of age or has had the disabilities of minority removed;

(2) reasonable attempts to inform and obtain permission from a parent or guardian have been made and documented;

(3) approval is obtained from:

(A) an adult who the school district recognizes as standing in parental relation to the student, including a foster parent or employee of a state or local governmental agency with temporary possession or control of the student; or

(B) the student, if no parent, guardian, or other responsible adult is available; or

(4) a parent or guardian has not objected in writing to the proposed entry, exit, or placement.

§89.1225. *Testing and Classification of Students.*

(a) For identifying English language learners [limited English proficient students], school districts shall administer to each student who has a language other than English as identified on the home language survey:

(1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and

(2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment [measure], or another test approved by the TEA, unless the norm-referenced standardized achievement instrument [measure] is not valid in accordance with subsection (f)(2)(C) of this section.

(b) School districts that [Districts which] provide a bilingual education program shall administer an oral language proficiency test in the home language of the student [students] who is [are] eligible to be [for being] served in the bilingual education program. If the home language of the student [students] is Spanish, the school district shall administer the Spanish version of the TEA-approved oral language proficiency test that [which] was administered in English. If the home lan-

guage of the student [students] is other than Spanish, the school district shall determine the student's [students'] level of proficiency using informal oral language assessment measures.

(c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.

(d) The grade levels and the scores on each test that [which] shall identify a student as an English language learner [limited English proficient] shall be established by the TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.

(e) Students with a language other than English shall be administered the required oral language proficiency test in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 within 20 school days [four weeks] of their enrollment. [Norm-referenced assessment instruments; however, may be administered within the established norming period.]

(f) For entry into a bilingual education or English as a second language program, a student shall be identified as an English language learner [limited English proficient] using the following criteria.

(1) In [At] prekindergarten through Grade 1, the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section.

(2) In [At] Grades 2-12:

(A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;

(B) the student's score on the English reading and/or English [and] language arts sections of the TEA-approved norm-referenced standardized achievement instrument [measure] at his or her grade level is below the 40th percentile; or

(C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced standardized achievement [assessment] instrument or other test approved by the TEA is not valid.

(3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.

(4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).

(g) Within 20 school days [the four weeks] of their initial enrollment in the school district, students shall be identified as English language learners [limited English proficient] and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as English language learners [limited English proficient] and enrolled in the required bilingual education or English as

a second language program within 20 school days [~~four weeks~~] of the start of the school year in the fall.

(h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a general education [~~regular~~], all-English[;] instructional program. This determination shall be based upon all of the following:

(1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;

(2) satisfactory performance on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or a TEA-approved English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced standardized achievement [~~assessment~~] instrument for a student who is enrolled in Grade 1 or 2; and

(3) TEA-approved criterion-referenced written tests when available, or other TEA-approved tests when criterion-referenced tests are not available, and the results of a subjective teacher evaluation.

(i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. A school district must ensure that English language learners [~~limited English proficient students~~] are prepared to meet academic standards required by the TEC, §28.0211.

(j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:

(1) the student meets state performance standards in English on [~~of~~] the criterion-referenced assessment instrument required in the TEC [~~Texas Education Code~~], §39.023, for the grade level as applicable; and

(2) the student has passing grades in all subjects and courses taken.

(k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.

(l) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.

§89.1227. Minimum Requirements for Dual Language Immersion Program Model.

(a) A dual language immersion program model must address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) to include foundation and enrichment areas, English language proficiency standards, and college and career readiness standards.

(b) A dual language immersion program model shall be a full-time program of academic instruction in English and another language.

(c) A minimum of 50% of instructional time must be provided in the language other than English.

(d) Implementation should:

(1) begin at prekindergarten, kindergarten, or Grade 1, as applicable;

(2) continue without interruption incrementally through the elementary grades whenever possible; and

(3) consider expansion to middle school and high school whenever possible.

(e) A dual language immersion program model shall be developmentally appropriate and based on current best practices research.

§89.1228. Dual Language Immersion Program Model Implementation.

(a) Student enrollment in a dual language immersion program model is optional.

(b) A dual language immersion program model must fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability.

(c) A school district must obtain written parental approval for student participation in the program sequence and model established by the school district.

(d) A school district implementing a dual language immersion program model must develop a policy on enrollment and continuation for students in this program model. The policy must address:

(1) eligibility criteria;

(2) program purpose;

(3) grade levels in which the program will be implemented;

(4) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and

(5) expectations for students and parents.

§89.1230. Eligible Students with Disabilities.

(a) School districts [~~Districts~~] shall implement assessment procedures that [~~which~~] differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services)[;] and shall establish placement procedures that [~~which~~] ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

(b) Admission, review, and dismissal committee members shall meet in conjunction with language proficiency assessment committee members to review the educational needs [A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee] of each English language learner [~~limited English proficient student~~] who qualifies for services in the special education program.

§89.1233. Participation of English Proficient [~~Nonlimited English Proficiency~~] Students.

School districts [~~Districts~~] may enroll students who are not English language learners [~~limited English proficient~~] in the bilingual education program in accordance with the Texas Education Code, §29.058.

§89.1235. *Facilities.*

Bilingual education and English as a second language programs shall be located in the regular public schools of the school district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, school districts may concentrate the programs at a limited number of facilities [schools] within the school district provided that the enrollment in those facilities [schools] shall not exceed 60% English language learners [limited English proficient students]. Recent immigrant English language learners enrolled in newcomer centers shall return to home campuses no later than two years after initial enrollment in a newcomer program.

§89.1240. *Parental Authority and Responsibility.*

(a) The parents shall be notified that their child has been classified as an English language learner [limited English proficient] and recommended for placement in the required bilingual education or English as a second language program. They shall be provided information describing the bilingual education or English as a second language program recommended, its benefits to the student, and its being an integral part of the school program to ensure that the parents understand the purposes and content of the program. The entry or placement of a student in the bilingual education or English as a second language program must be approved in writing by the student's parent. The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or English as a second language program until the student meets the exit criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), graduates from high school, or the parent requests a change in program placement.

(b) The school district shall notify the student's parent of the student's reclassification as English proficient and his or her exit from the bilingual education or English as a second language program and acquire approval as required under the Texas Education Code, §29.056(a). Students meeting exit requirements may continue in the bilingual education or English as a second language program with parental approval but are not eligible for inclusion in the school district bilingual education allotment.

(c) The parent of a student enrolled in a school district that [which] is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the school district fails to comply with the law or the rules. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

§89.1245. *Staffing and Staff Development.*

(a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language programs in accordance with the Texas Education Code (TEC), §29.061, concerning bilingual education and special language program teachers. School districts that [Districts which] are unable to secure a sufficient number of certified bilingual education and English as a second language teachers to provide the required programs, shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Chapter 230[, Subchapter Q,] of this title (relating to Professional Educator Preparation and Certification [Permits]).

(b) School districts that [which] are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and English as a second language programs shall apply on or before November [October] 1 for an exception to the bilingual education program as provided in §89.1207(a) [§89.1205(g)] of this title (relating to Exceptions and Waivers [Required Bilingual Education and English

as a Second Language Programs]) or a waiver of the certification requirements in the English as a second language program as provided in §89.1207(b) [§89.1205(h)] of this title [(relating to Required Bilingual Education and English as a Second Language Programs)] as needed.

(c) Teachers assigned to the bilingual education program and/or English as a second language program may receive salary supplements as authorized by the TEC [Texas Education Code], §42.153.

(d) School districts [Districts] may compensate teachers and aides assigned to bilingual education and English as a second language programs for participation in continuing education programs designed to increase their skills or lead to bilingual education or English as a second language certification.

(e) School districts that [Districts which] are unable to staff their bilingual education and English as a second language programs with fully certified teachers shall use at least 10% of their bilingual education allotment for preservice and inservice training to improve the skills of the teachers who provide [the] instruction in the alternative bilingual education program, [who provide] instruction in English as a second language, and/or [who provide] content area instruction in special classes for English language learners [limited English proficient students].

(f) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or English as a second language programs.

(g) The Texas Education Agency (TEA) shall develop, in collaboration with education service centers [Education Service Centers] (ESCs), bilingual education training guides for implementing bilingual education and English as a second language training programs. The materials shall provide a framework for:

(1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;

(2) affectively appropriate instruction in bilingual education and English as a second language programs in accordance with §89.1210(c)(1) and (f)(1) [§89.1210(e)(1)] of this title (relating to Program Content and Design);

(3) linguistically appropriate bilingual education and English as a second language programs in accordance with §89.1210(c)(2) and (f)(2) [§89.1210(e)(2)] of this title [(relating to Program Content and Design)];

(4) cognitively appropriate programs for English language learners [limited English proficient students] in accordance with §89.1210(c)(3) and (f)(3) [§89.1210(e)(3)] of this title [(relating to Program Content and Design)]; and

(5) developmentally appropriate programs for English language learners identified as gifted and talented [limited English proficient students] and English language learners [limited English proficient students] with disabilities [handicaps].

§89.1250. *Required Summer School Programs.*

Summer school programs that are provided under the Texas Education Code (TEC), §29.060, for English language learners [children of limited English proficiency] who will be eligible for admission to kindergarten or Grade 1 [first grade] at the beginning of the next school year shall be implemented in accordance with this section.

(1) Purpose of summer school programs.

(A) English language learners [limited English proficient students] shall have an opportunity to receive special instruction

designed to prepare them to be successful in kindergarten and Grade 1 [~~first grade~~].

(B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student.

(C) The program shall address the affective, linguistic, and cognitive needs of the English language learners [~~limited English proficient students~~] in accordance with §89.1210(c) and (f) [~~§89.1210(e)~~] of this title (relating to Program Content and Design).

(2) Establishment of, and eligibility for, the program.

(A) Each school district required to offer a bilingual or English as a second language (ESL) [~~special language~~] program in accordance with the TEC [~~Texas Education Code~~], §29.053, shall offer the summer program. [~~Programs under this subsection for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education.~~]

(B) To be eligible for enrollment: [~~a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be limited English proficient.~~]

(i) a student must be eligible for admission to kindergarten or to Grade 1 at the beginning of the next school year and must be an English language learner; and

(ii) a parent or guardian must have approved placement of the English language learner in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee) and §89.1225(a)-(f) of this title (relating to Testing and Classification of Students).

(C) Limited English proficiency shall be determined by evaluating [~~screening~~] students using an [~~informal oral language inventories or~~] oral language proficiency test [~~instruments~~] approved by the Texas Education Agency [~~commissioner of education, or other appropriate instruments~~].

(3) Operation of the program.

(A) Enrollment [~~in the program~~] is optional [~~with the parents of the student~~].

(B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction.

(C) The student/teacher ratio for the program district-wide shall not exceed 18 to one.

(D) A school district is not required to provide transportation for the summer program.

(E) Teachers shall possess certification or endorsement as required in the TEC [~~Texas Education Code~~], §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).

(F) Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.

(G) A school district may join with other school districts in cooperative efforts to plan and implement programs.

(H) The summer school program shall not substitute for any other program required to be provided during the regular school

term, including those required in the TEC [~~Texas Education Code~~], §29.153.

(4) Funding and records for programs.

(A) A school district shall use state and local funds for program purposes. School districts [~~Districts~~] may use federal funds, consistent with requirements for the expenditure of federal funds, for the program.

(i) Available funds appropriated by the legislature for the support of summer school programs provided under the TEC [~~Texas Education Code~~], §29.060, shall be allocated to school districts in accordance with this subsection.

(ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to one. The numbers of students required to earn units shall be established by the commissioner [~~of education~~]. The allotment per unit shall be determined by the commissioner based on funds available.

(iii) Any school district required to offer the program under paragraph (2)(A) of this subsection that has less than ten students district-wide desiring to participate is not required to operate the program. However, those school districts must demonstrate that they have aggressively attempted to encourage student participation.

(iv) Payment to school districts for summer school programs shall be based on units employed. This information must be submitted in a manner and according to a schedule established by the commissioner [~~of education~~] in order for a school district to be eligible for funding.

(B) A school district shall maintain records of eligibility, attendance, and progress of students.

§89.1265. *Evaluation.*

(a) All school districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment [~~and continuous diagnosis~~] in the languages of instruction to determine program impact and student outcomes in all subject areas.

(b) Annual reports of educational performance shall reflect the academic progress in either language of the English language learners [~~limited English proficient students~~], the extent to which they are becoming proficient in English, the number of students who have been exited from the bilingual education and English as a second language programs, and the number of teachers and aides trained and the frequency, scope, and results of the training. These reports shall be retained at the district level [~~to be made available to monitoring teams according to §89.1260 of this title (relating to Monitoring of Programs and Enforcing Law and Commissioner's Rules)~~].

(c) School districts [~~Districts~~] shall report to parents the progress of their child as a result of participation in the program offered to English language learners [~~limited English proficient students~~] in English and the home language at least annually.

(d) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the Texas Education Code, §11.253, for the purpose of improving student performance for English language learners [~~limited English proficient students~~].

§89.1267. *Standards for Evaluation of Dual Language Immersion Program Models.*

(a) A school district implementing a dual language immersion program must conduct annual formative and summative evaluations

collecting a full range of data to determine program impact on student academic success.

(b) The success of a dual language immersion program is evident by students in the program demonstrating high levels of language proficiency in English and the other language and mastery of the Texas essential knowledge and skills for the foundation and enrichment areas. Indicators of success may include scores on statewide student assessments in English, statewide student assessments in Spanish (if appropriate), norm-referenced standardized achievement tests in both languages, and/or language proficiency tests in both languages.

§89.1269. General Standards for Recognition of Dual Language Immersion Program Models.

(a) School district recognition. An exceptional dual language immersion program model may be recognized by the local school district board of trustees using the following criteria.

(1) A school district must exceed the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).

(2) A school district must not receive the lowest performance rating in the state accountability system.

(3) A school district must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the performance-based monitoring system.

(4) A school district must meet the adequate yearly progress participation and performance criteria in reading and mathematics for the English language learner student group under Elementary and Secondary Education Act (ESEA) regulations.

(b) Student recognition. A student participating in a dual language immersion program model may be recognized by the program and its local school district board of trustees using the following criteria.

(1) The student must meet or exceed statewide student assessment passing standards, as required by the Texas Education Code, §39.024, in all subject areas at the appropriate grade level.

(2) The student must meet or exceed expected levels of language proficiency on a recognized language proficiency test from the list of tests approved by the commissioner of education.

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 March 5, 2012.

TRD-201201277

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 15, 2012

For further information, please call: (512) 475-1497



SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING DUAL LANGUAGE IMMERSION PROGRAMS

**19 TAC §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609,
89.1611, 89.1613**

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

The Texas Education Agency (TEA) proposes the repeal of §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, and 89.1613, concerning dual language immersion programs. The sections establish rules for the implementation of dual language programs in Texas school districts. The proposed repeals would remove language related to dual language instruction, which would be incorporated as part of the commissioner's rules concerning the state plan for educating English language learners in 19 TAC Chapter 89, Subchapter BB. This is necessary to clarify the relationship between bilingual education and dual language instruction.

In accordance with the TEC, §28.0051, the commissioner of education exercised rulemaking authority to establish rules for the implementation of dual language programs in Texas school districts, including the establishment of minimum requirements for such a program, standards for evaluating program success and performance, and standards for recognizing exceptional programs and students who successfully complete these programs. The commissioner's rules in 19 TAC Chapter 89, Subchapter FF, adopted to be effective July 23, 2007, provide for dual language immersion programs that would result in students with a demonstrated mastery of the required curriculum in both English and one other language.

During the recent statutorily required review of rules in 19 TAC Chapter 89, staff identified the need to update rules. Accordingly, the proposed repeal of 19 TAC Chapter 89, Subchapter FF, would remove rules concerning dual language immersion programs and incorporate the rules into 19 TAC Chapter 89, Subchapter BB, concerning educating English language learners. This change will integrate and streamline the two sets of rules.

The proposed repeals would have no procedural or reporting implications. The proposed repeals would have no locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the repeals are in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule actions.

Ms. Givens has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals would be clarification of the relationship between bilingual education and dual language instruction. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

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 March 16, 2012, and ends April 16, 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 submit-

ted 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 March 16, 2012.

The repeals are proposed under the Texas Education Code (TEC), §28.0051, which requires the commissioner of education by rule to adopt minimum requirements for a dual language immersion program implemented by a school district; standards for evaluating the success of a dual language immersion program and the performance of schools that implement a dual language immersion program; and standards for recognizing schools that offer an exceptional dual language immersion program and students who successfully complete a dual language immersion program.

The repeals implement the Texas Education Code, §28.0051.

§89.1601. *Definitions.*

§89.1603. *Dual Language Immersion Program Goals.*

§89.1605. *Minimum Program Requirements.*

§89.1607. *Staffing and Staff Development.*

§89.1609. *Program Implementation.*

§89.1611. *Standards for Evaluation.*

§89.1613. *General Standards for Recognition.*

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 March 5, 2012.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 183. ACUPUNCTURE

22 TAC §183.4

The Texas State Board of Acupuncture Examiners (Board) proposes amendments to §183.4, concerning Licensure.

The amendment provides that applicants for licensure must demonstrate active practice within either of the two years prior to date of application, and that the Board can issue temporary licenses to applicants to remedy active practice deficiencies.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure that applicants for licensure are granted licensure upon demonstration that clinical skills are up-to-date.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication

to state or local government as a result of enforcing the section as proposed. There will be no effect on individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §205.101, 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 acupuncture in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Texas Occupations Code, §205.202.

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

§183.4. *Licensure.*

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1) - (8) (No change.)

(9) can demonstrate current competence through the active practice of acupuncture.

(A) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively treated persons, been a student at an acceptable approved acupuncture school, or been on the active teaching faculty of an acceptable approved acupuncture school, within either of the last two years preceding receipt of an application for licensure.

(B) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(C) Applicants who do not meet the requirements of subparagraphs (A) and (B) of this paragraph may, in the discretion of the executive director or board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions:

(i) limitation of the practice of the applicant to specified components of the practice of acupuncture and/or exclusion of specified components of the practice of acupuncture;

(ii) remedial education; or

(iii) such other remedial or restrictive conditions or requirements that, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice acupuncture.

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

(d) Temporary license.

(1) Issuance. The acupuncture board may, through the executive director of the agency, issue a temporary license to a licensure applicant who:

(A) appears to meet all the qualifications for an acupuncture license under the Act, but is waiting for the next scheduled meeting of the acupuncture board for review and for the license to be issued; or[-]

(B) has not, on a full-time basis, actively practiced as an acupuncturist as defined under subsection (a)(9) of this section but meets all other requirements for licensure.

(2) (No change.)

(e) - (f) (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 March 5, 2012.

TRD-201201279

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: April 15, 2012

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



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists proposes amendments to §465.2, Supervision. The amendments would require that supervisors of a practicum, internship or period of supervised experience required for licensure provide written performance reports for the supervisee at least every three months.

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

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

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

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

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

§465.2. Supervision.

(a) A licensee is responsible for the professional supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(b) Licensees ensure that their supervisees have legal authority to provide psychological services in adherence to Board rules.

(c) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee and the type of psychological services.

(d) Licensees must be competent to perform any psychological services being provided under their supervision.

(e) Licensees shall document their supervision activities in writing.

(f) A supervisor must document in writing, at least every three months, the supervision activities and the supervisee's performance during a practicum, internship, or period of supervised experience required for licensure and must provide this documentation to the supervisee.

(g) [(f)] Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(h) [(g)] Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance.

(i) [(h)] For purposes of this section, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(j) [(i)] A licensee who is practicing subject to an agreed order is not qualified to provide supervision for a person seeking to fulfill the internship or practicum requirements set by Board rule §463.8 of this title (relating to Licensed Psychological Associate), §463.9 of this title (relating to Licensed Specialist in School Psychology), or §463.10 of this title (relating to Provisionally Licensed Psychologists).

(k) [(j)] Licensed psychological associates and provisionally licensed psychologists must be under the supervision of a licensed psychologist and may not engage in independent practice.

(l) [(k)] A licensee providing supervision must be actively licensed.

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 February 28, 2012.

TRD-201201216

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §465.11

The Texas State Board of Examiners of Psychologists proposes amendments to §465.11, Informed Consent/Describing Psychological Services. The amendments would require the licensee to ensure that the individual(s) providing substitute consent would have legal authority to do so and would help to ensure that misrepresentation of a licensee by name does not occur.

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

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

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

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

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

§465.11. Informed Consent/Describing Psychological Services.

(a) Licensees obtain and document in writing informed consent concerning all services they intend to provide to the patient, client or other recipient(s) of the psychological services prior to initiating the services, using language that is reasonably understandable to the recipients unless consent is precluded by applicable federal or state law. A licensee shall also inform the patient; client; or other recipient(s) of the psychological services in writing, of the licensee's name as it appears in their professional file with the Board prior to initiating services.

(b) Licensees provide appropriate information as needed during the course of the services about changes in the nature of the services to the patient client or other recipient(s) of the services using language that is reasonably understandable to the recipient to ensure informed consent.

(c) Licensees provide appropriate information as needed, during the course of the services to the patient client and other recipient(s) and afterward if requested, to explain the results and conclusions reached concerning the services using language that is reasonably understandable to the recipient(s).

(d) When a licensee agrees to provide services to a person, group or organization at the request of a third party, the licensee clarifies to all of the parties the nature of the relationship between the licensee and each party at the outset of the service and at any time during the services that the circumstances change. This clarification includes the role of the licensee with each party, the probable uses of the services and the results of the services, and all potential limits to the confidentiality between the recipient(s) of the services and the licensee.

(e) When a licensee agrees to provide services to several persons who have a relationship, such as spouses, couples, parents and children, or in group therapy, the licensee clarifies at the outset the professional relationship between the licensee and each of the individuals involved, including the probable use of the services and information obtained, confidentiality, expectations of each participant, and the access of each participant to records generated in the course of the services.

(f) At any time that a licensee knows or should know that he or she may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the licensee explains the potential conflict to all affected parties and adjusts or withdraws from all professional services in accordance with Board rules and applicable state and federal law. Further, licensees who encounter personal problems or conflicts as

described in Board rule [Rule] §465.9(i) of this title (relating to Competency) that will prevent them from performing their work-related activities in a competent and timely manner must inform their clients of the personal problem or conflict and discuss appropriate termination and/or referral to insure that the services are completed in a timely manner.

(g) When persons are legally incapable of giving informed consent, licensees obtain informed consent from any individual legally designated to provide substitute consent. Prior to the commencement of providing psychological services to a minor who a licensee reasonably believes is the subject of a court order or the ward of a guardianship, a licensee shall obtain and keep a copy of any court order, divorce decree, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward.

(h) When informed consent is precluded by law, the licensee describes the nature and purpose of all services, as well as the confidentiality of the services and all applicable limits thereto, that he or she intends to provide to the patient, client, or other recipient(s) of the psychological services prior to initiating the services using language that is reasonably understandable to the recipient(s).

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §465.13

The Texas State Board of Examiners of Psychologists proposes amendments to §465.13, Personal Problems, Conflicts and Dual Relationships. The amendments would help ensure that a licensee does not terminate psychological services with a patient in order to have a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children or siblings of the patient.

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

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

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

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make

all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§465.13. *Personal Problems, Conflicts and Dual Relationships.*

(a) In General.

(1) Licensees refrain from providing services when they know or should know that their personal problems or a lack of objectivity have the potential to impair their competency or harm a patient, client, colleague, student, supervisee, research participant, or other person with whom they have a professional relationship.

(2) Licensees seek professional assistance for any personal problems, including alcohol or substance abuse that have the potential to impair their competency.

(3) Licensees do not exploit persons over whom they have supervisory evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients.

(4) Licensees refrain from entering into any professional relationship that conflicts with their ability to comply with all Board rules applicable to other existing professional relationships.

(5) Licensees withdraw from any professional relationship that conflicts, or comes into conflict with, their ability to comply with Board rules relating to other existing professional relationships.

(b) Dual Relationships.

(1) A licensee must refrain from entering into a dual relationship with a client, patient, supervisee, student, group, organization, or any other party if such a relationship presents a risk that the dual relationship could impair the licensee's objectivity, prevent the licensee from providing competent psychological services, or exploit or otherwise cause harm to the other party.

(2) A licensee must refrain from a professional relationship where pre-existing personal, financial, professional, or other relationships have the potential to impair the licensee's objectivity or have any other potential to harm or exploit the other party.

(3) Licensees do not provide psychological services to a person with whom they have had a sexual relationship.

(4) Licensees do not terminate psychological services with a client [person] in order to have a sexual relationship with that client [person]. Licensees do not terminate psychological services with a client in order to have a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of the patient.

(5) A licensee considering a professional relationship that would result in a dual or multiple relationship shall take appropriate measures, such as obtaining professional consultation or assistance, to determine whether there is a risk that the dual relationship could impair the licensee's objectivity or cause harm to the other party. If potential for impairment or harm exists, the licensee shall not provide services regardless of the wishes of the other party.

(6) A licensee in a potentially harmful dual or multiple relationship must cease to provide psychological services to the other party, regardless of the wishes of that party.

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 15, 2012

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



22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, Forensic Services. The amendments would require the licensee to obtain and keep a copy of the order of appointment and ensure that the individual(s) providing substitute consent would have legal authority to do so and would help to ensure that misrepresentation of a licensee by name does not occur.

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

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

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

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

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

§465.18. *Forensic Services.*

(a) In General.

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

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

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

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

(5) When appointed or designated by a court to provide psychological services, a licensee shall obtain and keep a copy of the court order.

(6) When providing forensic psychological services to a minor who is the subject of a court order or the ward of guardianship, a licensee shall obtain and keep a copy of any court order, divorce decree, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward.

(b) Limitation on Services.

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

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

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

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

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

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

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

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

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

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

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

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

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

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

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

(10) The licensee's name as it appears in their professional file with the Board prior to initiating services.

(d) Child Custody Evaluations.

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

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

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

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

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

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

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

(f) Parenting Facilitators.

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

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

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

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

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

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

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

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

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 15, 2012

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



22 TAC §465.33

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.33, Improper Sexual Conduct. The amendment would help ensure that a licensee does not sexually exploit relatives or certain other collaterals of a patient.

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

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

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

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

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

§465.33. Improper Sexual Conduct.

(a) "Sexual Harassment" includes solicitation, physical advances, or verbal or nonverbal conduct consisting of a single intense or severe act or of multiple persistent or pervasive acts by a licensee toward another individual that are sexual in nature and occur in connection with licensee's professional activities and that are unwelcome, offensive, or create a hostile workplace environment for that individual.

(b) "Sexual Impropriety" is deliberate or repeated comments, gestures, or physical acts of a sexual nature that include, but are not limited to:

- (1) Behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexually demeaning;
- (2) Making inappropriate comments about an individual's body;
- (3) Making sexually demeaning comments to an individual;
- (4) Making comments about an individual's potential sexual performance, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction in therapy/counseling;
- (5) Requesting details of a patient or client's sexual history when not clinically indicated for the type of consultation;
- (6) Requesting a date;
- (7) Initiating conversation regarding the sexual problems, preferences, or fantasies of either party; or
- (8) Kissing of a sexual nature.

(c) A sexual relationship is the engaging in any conduct that is sexual or may be reasonably interpreted as sexual in nature including, but not limited to:

- (1) Sexual intercourse;
- (2) Genital contact;
- (3) Oral to genital contact;
- (4) Genital to anal contact;
- (5) Oral to anal contact;
- (6) Touching breasts or genitals;
- (7) Encouraging another to masturbate in one's presence;
- (8) Masturbation in another's presence; or
- (9) Exposure of sexual organs, breasts or buttocks.

(d) A licensee may not engage in sexual harassment, sexual impropriety, or a sexual relationship with a current patient or client; a former patient or client over whom the licensee has influence due to a therapeutic relationship; students[;] or trainees; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current patients; or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may

not engage in a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former patients for at least two years after termination of services.

(e) Psychologists do not accept as clients individuals with whom they have engaged in sexual relationships.

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.38, Psychological Services for Public Schools. The amendment would allow an LSSP to use the title Nationally Certified School Psychologist (NCSP) if the LSSP holds this certification.

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

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

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

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

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

§465.38. *Psychological Services for Public Schools.*

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for

rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) Definition.

(A) The specialist in school psychology license permits the licensee to provide school psychological services in Texas public schools.

(B) A licensed specialist in school psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs.

(C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(2) Titles. The correct title for persons holding this license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitation, and Specialty Titles) may refer to themselves as School Psychologists. No individual may use the title Licensed School Psychologist. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(3) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include LSSPs and interns or trainees as defined in §463.9 of this title (relating to Licensed Specialist in School Psychology). Nothing in this rule prohibits public schools from contracting with licensed psychologists and licensed psychological associates who are not LSSPs to provide psychological services, other than school psychology, in their areas of competency. School districts may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, which are not readily available from the licensed specialist in school psychology employed by the school district. Such contracting must be on a short term or part time basis and cannot involve the broad range of school psychological services listed in paragraph (1)(B) of this section. An LSSP who contracts with a school district to provide school psychological services may not permit an individual who does not hold a valid LSSP license to perform any of the contracted school psychological services.

(4) Supervision.

(A) Direct, systematic, face-to-face supervision must be provided to:

(i) Interns as defined in §463.9 of this title.

(ii) Individuals who meet the training requirements of §463.9 of this title and who have passed the National School Psychology Examination at the Texas cutoff score or above and who have been notified in writing of this status by the Board. These individuals may practice under supervision in a Texas public school district for no more than one calendar year. They must be designated as trainees.

(iii) LSSPs for a period of one academic year following licensure unless the individual also holds licensure as a psychologist in Texas. This supervision may be waived for individuals who legally provided full-time, unsupervised school psychological ser-

vices in another state for a minimum of three academic years immediately preceding application for licensure in Texas as documented by the public schools where services were provided and who graduated from a training program approved by NASP or accredited in school psychology by APA or who hold NCSP certification.

(iv) LSSPs when the individual is providing psychological services outside his or her area of training and supervised experience.

(B) Nothing in this rule applies to administrative supervision of psychology personnel within Texas public schools, performed by non-psychologists, in job functions involving, but not limited to, attendance, time management, completion of assignments, or adherence to school policies and procedures.

(5) Supervisor Qualifications. Supervision may only be provided by a LSSP, who has a minimum of three years of experience providing psychological services in the public schools of this or another state. To meet supervisor qualifications, a licensee must be able to document the required experience by providing documentation from the authority that regulates the provision of psychological services in the public schools of that state and proof that the licensee provided such services, documented by the public schools in the state in which the services were provided. Any licensed specialist in school psychology may count one full year as an intern or trainee as one of the three years of experience required to perform supervision.

(6) Conflict Between Laws and Board Rules. In the event of a conflict between state or federal statutes and Board rules, state or federal statutes control.

(7) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(A) Texas Education Code;

(B) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232q;

(C) Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq;

(D) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;

(E) Section 504 of the Rehabilitation Act of 1973.

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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



CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.13

The Texas State Board of Examiners of Psychologists proposes new §470.13, Entry of Appearance in Contested Case; Contents of Responsive Pleading. The new rule would require the respondent in a contested case before the State Office of Administrative Hearings to enter an appearance in the case and state, in short and plain terms, its defenses to each claim asserted against it and admit or deny, either in whole or in part, the allegations asserted against it.

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

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

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

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

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

§470.13. Entry of Appearance in Contested Case; Contents of Responsive Pleading.

(a) When a contested case has been instituted by the Board with the State Office of Administrative Hearings (SOAH), the respondent or the respondent's attorney shall enter an appearance not later than 20 days after the date of receipt of the Board's pleading in the contested case.

(b) For the purposes of this section, a contested case shall mean any action that is referred by the Board to SOAH.

(c) For the purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with SOAH. A party's entry of appearance must state in short and plain terms its defenses to each claim asserted against it, and admit or deny, either in whole or in part, the allegations asserted against it. A denial must fairly respond to the substance of the allegation. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(d) The filing of an untimely appearance by a party or respondent's physical appearance at a hearing without entry of a written appearance, entitles the Board to a continuance of the hearing in the contested case at the Board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 60 days. For the purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent received the Board's pleading.

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.53

The Texas Real Estate Commission (TREC) proposes amendments to §535.53, concerning Business Entities. The proposed amendments would clarify that a business entity obtaining or renewing a license or an entity changing its designated broker would need to provide proof that the new designated broker directly owns at least 10% of the business entity obtaining or renewing the license and that the new designated broker is an officer, manager, or general partner of the entity. If the new designated broker does not directly own at least 10% of the business entity, it would need to show proof that the entity maintains the appropriate errors and omissions insurance as required by the Act.

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

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency between the Act and the Rules.

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

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

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

§535.53. *Business Entities.*

(a) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate a broker to act for it. The business entity may not act as a broker during any period in which it does not have a designated broker to act for it who meets the requirements of the Act. To obtain or renew a license, or upon [Upon] any change in the business entity's designated broker, the entity must provide proof to the commission of the designated broker's current status as an officer, manager or general partner for that entity and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker does not own directly at least [øwas less than] 10 percent of the entity. A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended or revoked.

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

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

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Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 15, 2012

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



SUBCHAPTER L. TERMINATION OF SALESPERSON'S ASSOCIATION WITH SPONSORING BROKER

22 TAC §535.121

The Texas Real Estate Commission (TREC) proposes amendments to §535.121, concerning Inactive License. The amendments are proposed to implement the relevant provisions of Senate Bill (SB) 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to require licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. The amendments to §535.121 clarify that the section applies to all business entities as defined under the Act.

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

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

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

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

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

§535.121. *Inactive License.*

(a) The license of a salesperson immediately becomes inactive upon each of the following circumstances:

- (1) the death of the salesperson's sponsoring broker;
- (2) the expiration, suspension, revocation or inactivation of the license of the sponsoring broker;
- (3) if the sponsoring broker is a business entity [~~corporation~~], the dissolution of the entity [~~corporation~~] or the forfeiture of its charter, which also places the license of the entity on inactive status;
- (4) if the sponsoring broker is a business entity [~~corporation, limited liability company or partnership~~], the expiration, suspension, revocation or inactivation of the license of the designated broker of the entity, which also places the license of the entity on inactive status; or
- (5) if a broker notifies the commission in writing that the broker no longer sponsors the salesperson.

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

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

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission

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



SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.211

The Texas Real Estate Commission (TREC) proposes amendments to §535.211, concerning Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102. The proposed amendments delete the reference to a form number in the section and provide that the form to be used is approved by the Commission.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments as proposed, nor is there any anticipated impact on local or state employment.

Ms. DeHay has also determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments will be clarity and consistency with other license types regulated by the agency. There is no anticipated economic cost to persons required to comply with the amendments. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the amendments.

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

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the proposed amendments.

§535.211. *Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102.*

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

(c) The applicant must provide proof of insurance using a [08] Certificate of Insurance form approved by the commission and [REI COI-0] signed by the applicant's insurance agent, or any other proof of insurance acceptable to the commission.

(d) - (f) (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.

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: April 15, 2012

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



22 TAC §535.226

The Texas Real Estate Commission (TREC) proposes an amendment to §535.226, concerning Sponsorship of Apprentices Inspectors and Real Estate Inspectors. The amendment allows a professional inspector to delegate the sponsorship of an apprentice or real estate inspector to another professional inspector who is qualified to sponsor, provided that the sponsoring professional inspector remains responsible for the conduct of the sponsored inspector. The amendment also corrects a typo in the title of the section.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the amendment is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment as proposed, nor is there any anticipated impact on local or state employment.

Ms. DeHay has also determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the amendment will be clarity and consistency with other license types regulated by the agency. There is no anticipated economic cost to persons required to comply with the amendment. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the amendment.

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

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the proposed amendment.

§535.226. *Sponsorship of Apprentice [Apprentices] Inspectors and Real Estate Inspectors.*

(a) - (e) (No change.)

(f) A sponsoring professional inspector may delegate the supervision of an apprentice inspector or real estate inspector to another professional inspector who is qualified to sponsor, but the sponsor remains responsible for the conduct of the sponsored inspector.

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

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Loretta R. DeHay

General Counsel

Texas Real Estate Commission

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



CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.43

The Texas Real Estate Commission (TREC) proposes amendments to §537.43, concerning Standard Contract Form TREC No. 36-6 Addendum for Property Subject to Mandatory Membership in a Property Owners' Association. The amendments to §537.43 adopt by reference Standard Contract Form TREC No. 36-7.

Paragraph A.1 is revised, new paragraph A.2 acknowledges recent statutory revisions which permit a buyer to obtain a resale

certificate directly from a property owner's association, and paragraph A.3 (currently A.2) is unchanged. Paragraph C is revised to replace "resulting from" to "associated with" to track recent statutory changes to Chapter 207, Property Code. New paragraph E provides that the seller authorizes the association to release information such as the status of dues, special assessments, violations of covenants and restrictions, and a waiver of any right of first refusal if requested by the buyer, the title company, or any broker to the sale.

Amendments to the form change the main telephone number and website address for TREC located in the box at the bottom of the forms.

A previous draft of the form was published for notice and comment on December 30, 2011. After reviewing numerous comments from the public, licensees, and representatives from the title industry, the Broker Lawyer Committee recommended additional revisions to the form to make it clear that a title company is authorized to obtain subdivision information from a property owners association only upon receipt of payment for the information from the party obligated to pay for the information under the contract. This additional change clarifies concerns about compensation to a title company in situations where the title company pays for the subdivision information on behalf of a party to the contract, is not reimbursed if the sale does not close, and is not authorized to obtain reimbursement from the earnest money before it is disbursed to a requesting party.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

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

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the availability of current standard contract forms that, among other things, conform to new or recently revised statutory requirements.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

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

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

§537.43. *Standard Contract Form TREC No. 36-7[6].*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-7[6] approved by the Texas Real Estate Commission in 2012 [2010] for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov [www.trec.state.tx.us].

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 March 1, 2012.

TRD-201201266

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 15, 2012

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



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.29

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.29, regarding licensure by endorsement, licensure under a reciprocal agreement, and reciprocal licensure by similar examination. The proposed amendment would mitigate the barriers to reciprocal licensure of persons licensed in other states and jurisdictions who were licensed under a grandfather provision, provided they meet certain qualifications for licensure.

Charles Horton, Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be little or no fiscal impact for state or local government as a result of enforcing or administering the section.

Mr. Horton has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by allowing professional license holders from other jurisdictions who have practiced competently for a number of years and have adhered to the professional requirement of licensure in their respective state(s) or jurisdiction(s) to qualify for licensure in Texas. There will be little or no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Charles Horton, Executive Director, Texas Board of Professional Geoscientists, P.O. Box 13225, Austin, Texas 78711.

Comments may also be submitted electronically to chornton@tbp.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendment is published in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by TBPG no more than 15 calendar days after notice of proposed amendment to this section has been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.157, which allows the Board to enter into reciprocity agreements, and §1002.257, which authorizes the Board to license a person that holds a license in another state or jurisdiction.

The proposed amendment implements the Texas Occupations Code, §§1002.151, 1002.157, and 1002.257.

§851.29. *Licensure by Endorsement, Licensure Under a Reciprocal Agreement, and Reciprocal Licensure by Similar Examination.*

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

(d) An applicant for a Professional Geoscientist license who is currently licensed or registered to practice a discipline of geoscience under the law of another state, a territory or possession of the United States, or the District of Columbia who was licensed without examination, i.e. "grandfathered," with regard to a licensing examination or who was licensed based on a licensing examination that is not recognized as substantially similar to the current licensing examination required for licensure under subsection (c) of this section shall be deemed to have met the examination requirement upon verification of the following:

(1) Verification of a valid licensure in the other state or states. The applicant requesting licensure under this subsection must be in good standing with the State in which that person holds their current license as a professional geologist or geoscientist;

(2) Verification of at least five (5) years of responsible professional geoscience work experience since the date of their initial licensure;

(3) Verification that licensure was maintained continuously (including sequential licensure, if a license was held in more than one state) during the five (5) years prior to application with the Board; and

(4) Verification that no complaints are pending against the applicant, that no complaints against the person has been substantiated, and no disciplinary action(s) have ever been taken against the applicant.

(5) The applicant seeking licensure under this subsection shall be responsible for contacting the State in which s/he is currently licensed and all states in which the person has ever been licensed and cause to have certified copies of the contents of his/her licensure file sent directly to the Board, at the applicant's expense. The Board will maintain documentation of the individuals that are approved for licensure under this subsection.

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

Filed with the Office of the Secretary of State on March 1, 2012.

TRD-201201266

Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: April 15, 2012
For further information, please call: (512) 936-4405



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.100

The Comptroller of Public Accounts proposes new §9.100, concerning the property value study advisory committee created by House Bill 8, 81st Legislature, 2009, effective January 1, 2010. The section sets forth the purpose and tasks of the Property Value Study Advisory Committee and describes the manner in which the committee will report to the agency.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. The proposed new rule would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the new section may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box

13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This new section is proposed under House Bill 8 amendments to Government Code, §403.302(m), which creates the Property Value Study Advisory Committee.

This new section implements Government Code, §2110.005.

§9.100. Property Value Study Advisory Committee.

(a) Purposes and Tasks. The purposes of the Property Value Study Advisory Committee (PVSAC) are to consult with the comptroller regarding the conduct of the property value study pursuant to Government Code, §403.302 and to consult with the comptroller regarding appraisal district reviews pursuant to Tax Code, §5.102. The PVSAC's tasks are to receive reports of the results of the property value study on an annual basis and to provide input, at the request of the comptroller, concerning the manner in which the property value study is conducted and to receive the results of appraisal district reviews on an annual basis and to provide input concerning evaluation tools, scoring and compliance requirements for the appraisal district reviews.

(b) Manner of Reporting. The PVSAC will report to the comptroller by way of consultation at annual public meetings; no formal reports are required.

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

Filed with the Office of the Secretary of State on March 1, 2012.

TRD-201201252

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 15, 2012

For further information, please call: (512) 475-0387



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.43

The Texas Real Estate Commission withdraws the proposed amendment to §537.43 which appeared in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9176).

Filed with the Office of the Secretary of State on March 1, 2012.

TRD-201201253

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: March 1, 2012

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



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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance accounting. The amendment is adopted without changes to the proposed text as published in the December 23, 2011, issue of the *Texas Register* (36 TexReg 8719). The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The amendment adopts by reference the *2011-2012 Student Attendance Accounting Handbook Version 2*.

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code. This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each July or August. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2011-2012 school year. The release of a second version of the

handbook, *2011-2012 Student Attendance Accounting Handbook Version 2*, was necessary to incorporate newly developed attendance accounting provisions related to the Texas Virtual School Network (TxVSN), required by the Texas Education Code (TEC), §30A.153, as added by Senate Bill (SB) 1, 82nd Texas Legislature, First Called Session, 2011. Significant changes to the *2011-2012 Student Attendance Accounting Handbook Version 2* from the *2010-2011 Student Attendance Accounting Handbook Version 2* include the following.

Throughout the handbook

General references to the Texas Assessment of Knowledge and Skills have been changed to be references to required state assessments.

Section 1

An erroneous statement that FSP attendance reports must be made a part of a school's permanent records has been corrected to state that information for all FSP attendance reports must be available for audit purposes for five years from the completion of the school year.

Section 2

The amount of FSP funding the TEA may retain for failure to provide attendance records requested as part of an audit has been changed from 30 percent of the district's FSP allotment for the school year for which records were requested to 100 percent of the district's FSP allotment for the undocumented attendance for the school year for which records were requested.

In addition, technical edits have been made to provide clarity and remove redundant language.

Section 3

A subsection on whether time spent in a repeated course qualifies as instructional time has been added.

Requirements related to counting time spent in self-paced courses as instructional time have been added.

In the subsection related to enrollment procedures and requirements, a correction has been made to change a reference to 10 calendar days to be a reference to 10 working days. A clarification of what constitutes a working day has been added.

Enrollment procedures and requirements have been updated and revised.

Information on students' auditing classes has been revised to prohibit a school district or charter school from allowing a student to audit classes without being enrolled in the district or school.

In the subsection related to withdrawal procedures, a correction has been made to change a reference to 10 days to be a ref-

erence to 10 working days. A clarification of what constitutes a working day has been added.

Information related to compulsory attendance has been updated to reflect statutory changes.

The agency's policy on adoption of alternate attendance-taking times has been clarified, and information on when local policies on alternate attendance-taking times may be adopted has been added.

Information on absences related to participation in dual credit courses and the TxVSN has been added.

An explanation that school districts are responsible for determining what constitutes a religious holy day for purposes of excusing absences for FSP purposes has been added. Guidance on determining what constitutes a religious holy day has been added.

Clarification has been added that, for an appointment with a health care professional to be excused for FSP purposes, the health care professional must be licensed to practice in the United States.

An explanation that school districts must keep documentation related to any absence excused for FSP purposes has been added.

Clarification of the agency's policy on makeup days and missed instructional day waivers has been made. A table with information on what actions to take in situations related to school closure for issues of health or safety has been added.

Data submission dates have been updated.

Section 4

Information on the instructional arrangement/setting code to use for certain special education students receiving services in child-care facilities has been revised.

Information on the qualifications teachers providing special education homebound services must have has been clarified.

Information in the subsections related to special education homebound services and Pregnancy Related Services has been replaced with a note to see the applicable subsection of newly updated Section 9.

Section 5

The description of the number of career and technical education (CTE) programs of study that a district must offer to be eligible for CTE contact hour funding has been changed to specify that a district must offer at least one program of study in at least three different clusters, instead of at least three programs of study in at least three different clusters.

Information on the CTE state allotment has been updated to state that districts must spend their allotment funding in accordance with 19 TAC §105.11, Maximum Allowable Indirect Cost.

Section 5 has been reorganized so that all the information on Career Preparation courses appears in one subsection.

Information on CTE Career Preparation and Practicum courses has been revised.

Section 6

The subsection on the effective date of withdrawal from a bilingual or English as a second language (ESL) education program has been revised for clarity.

The chart containing bilingual or ESL education program exit criteria has been updated.

Information on evaluation of a student who has been transferred out of the bilingual or ESL education program has been clarified.

Information on the eligibility of a bilingual or ESL education program for funding has been updated.

Information on teacher certification requirements for bilingual and ESL education programs has been clarified.

Information on documentation related to Language Proficiency and Assessment Committee recommendations and parental approval requirements has been revised.

Section 7

Information on which districts must offer prekindergarten (PK) has been moved from the end of Section 7 to the beginning of the section.

One of the definitions of "homeless" for PK eligibility purposes has been updated to reflect statutory changes.

A statement about where to find more information about the new PK program type codes has been added.

Information on the PK Early Start Grant Program has been updated to reflect that the program will not be funded for the 2011-2012 school year.

Section 9

Provisions related to length of eligibility for break-in-service Compensatory Education Homebound Instruction have been revised.

Pregnancy Related Services (PRS) documentation requirements have been revised.

Provisions related to PRS and returning to campus during periods of confinement have been revised.

Provisions related to PRS and special education services have been revised.

In addition, technical edits have been made to provide clarity and remove redundant language.

Section 10

Descriptions of at-risk student populations have been revised to reflect statutory language.

Information on Alternative Education Campuses of Choice and residential facilities evaluated under alternative education accountability procedures has been revised to reflect changes to the accountability system.

Information on disciplinary alternative education programs, expulsion, and juvenile justice alternative education programs has been updated to reflect statutory changes.

Information on disciplinary removals of students with disabilities has been updated and consolidated into one section.

Information on out-of-school suspension has been updated to reflect statutory changes.

Section 11

The chart showing minimum passing standards to demonstrate college readiness has been updated. Text that described requirements shown in the updated chart has been deleted.

Information about whether time spent in developmental courses is considered instructional time for FSP purposes has been clarified.

Information on the Optional Extended Year Program has been updated to reflect that the program will not be funded for the 2011-2012 school year.

Clarification has been made that a student's attendance program may be changed from the regular program to the Optional Flexible School Day Program (OFSDP) in the middle of a six-week reporting period if the change is a result of the student's initial enrollment in the OFSDP.

Information on adopting an OFSDP withdrawal policy has been added.

An explanation has been added that an Optional Flexible Year Program (OFYP) day may not be scheduled on a day that falls before the fourth Monday in August, unless the entity operating the OFYP is a charter school, and may not be scheduled on a planned makeup day.

Clarification on recording attendance for OFYP students has been added, as has additional information on administering an OFYP.

The section on the TxVSN has been updated to reflect statutory changes and to include newly developed attendance accounting provisions.

Information on Interstate Compact on Educational Opportunity for Military Children provisions related to excused absences has been added.

Section 13

Glossary definitions have been updated, and obsolete definitions have been deleted.

The adopted amendment places the specific procedures contained in the *2011-2012 Student Attendance Accounting Handbook Version 2* in the Texas Administrative Code. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the Public Education Information Management System (PEIMS).

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept corresponds with the student attendance accounting requirement changes described previously.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began December 23, 2011, and ended January 23, 2012. Following is a summary of the public comments received and the corresponding agency responses.

Comment: A staff member at the Region 5 Education Service Center suggested that the agency clarify information in Section 7 related to students who are served through the special education and prekindergarten programs but are ineligible for prekindergarten. The commenter suggested that the information specify

the grade level to use when reporting such students using the PEIMS.

Agency Response: The agency agrees but has determined that the clarification does not warrant republishing the handbook this school year. The agency plans to make the suggested clarification in next school year's handbook.

Comment: An administrator at Houston Independent School District (HISD) commented that the handbook's new TxVSN eligibility requirements for students in TxVSN Online Schools (formerly Electronic Course Programs [eCPs]) should be changed.

Specifically, the commenter asked that the requirement that a student have been enrolled in a Texas public school the preceding year (if the student is not eligible under military or substitute care eligibility requirements) be changed to not be effective for the 2011-2012 school year.

The commenter also asked that the student eligibility requirements related to military dependents, as they apply to TxVSN Online Schools, be changed to require that a student have been previously enrolled in any of Grades 3-11 in Texas instead of that a student have been previously enrolled in high school in Texas.

The commenter stated that the TEC, §30A.006, allows the commissioner by rule to modify statutory provisions to allow for the transition of a former eCP that had been operating under previously existing statute to operate under current statute.

In addition, the commenter asked to have the terms of participation for the Texas Connections Academy at Houston changed accordingly.

Agency Response: The agency disagrees that the handbook's requirements need to be changed. The eligibility requirements are based on those in statute, and the requirements already include modifications for programs previously operated as eCPs.

However, the agency has addressed part of the commenter's concerns through issuance of a temporary, one-time exemption from one of the eligibility requirements for students already enrolled in TxVSN Online Schools for the 2011-2012 school year. Specific information about the exemption has been included in letters sent to the affected local education agencies, including HISD.

The commenter's request to have the terms of participation for the Texas Connections Academy at Houston changed addresses an issue outside the scope of the current rule proposal.

The amendment is adopted under the TEC, §30A.153, as added by SB 1, 82nd Texas Legislature, First Called Session, 2011, which requires the commissioner to adopt rules for the implementation of Foundation School Program funding for the state virtual school network, including rules regarding attendance accounting; and the TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §30A.153 and §42.004.

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 February 29, 2012.

TRD-201201237
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 20, 2012
Proposal publication date: December 23, 2011
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.6

The Texas Optometry Board adopts amendments to §273.6, concerning Licenses for a Limited Period, without changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8319).

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.

No comments were received regarding the proposal.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.252, and 351.254, and Senate Bill 1733, 82nd Legislature, Regular Session.

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, as authorizing the alternate licensing procedure to spouses of persons on active duty with the armed forces.

No other sections are affected by the amendments.

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 March 1, 2012.

TRD-201201271
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: March 21, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 305-8502



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts amendments to §461.7, License Statuses, without changes to

the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8127) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments being adopted correct a typographical error.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on February 28, 2012.

TRD-201201223
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 19, 2012
Proposal publication date: December 2, 2011
For further information, please call: (512) 305-7700



CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts new §463.30, Licensing for Military Spouses, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8128) and will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule being adopted would comply with Senate Bill 1733 passed by the 82nd Texas Legislature which requires occupational licensing agencies to adopt rules on licensing for spouses of members of the US Armed Forces.

No comments were received regarding the adoption of the new rule.

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

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

Filed with the Office of the Secretary of State on February 28, 2012.

TRD-201201225
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 19, 2012
Proposal publication date: December 2, 2011
For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.6

The Texas State Board of Examiners of Psychologists adopts amendments to §469.6, Temporary Suspension of a License, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8129) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments being adopted would clarify and define the proper forum for the hearings required when seeking the temporary suspension of a license and authorize the Board to conduct a hearing to determine whether disciplinary proceedings should be initiated against the licensee, simultaneously with a request for temporary suspension.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on February 28, 2012.

TRD-201201226
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 19, 2012
Proposal publication date: December 2, 2011
For further information, please call: (512) 305-7700

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PART 23. TEXAS REAL ESTATE COMMISSION

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

22 TAC §535.16

The Texas Real Estate Commission (TREC) adopts an amendment to §535.16, concerning Listings; Net Listings without changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9169) and will not be republished. The amendment is adopted to make the section consistent with the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.002, to add to the list of activities that are considered real estate brokerage which requires licensure as a real estate broker or salesperson a new item regarding broker price opinions.

The amendment to §535.16 clarifies that a real estate licensee must provide a broker price opinion rather than opinion of market value when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

The reasoned justification for the rule as adopted is consistency between the Texas Occupations Code, Chapter 1101, and 22 TAC Chapter 535 regarding the definition and use of the phrase "broker price opinion."

No comments were received on the rule as proposed.

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

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

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 March 1, 2012.

TRD-201201254
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 21, 2012
Proposal publication date: December 30, 2011
For further information, please call: (512) 936-3092

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.56

The Texas Real Estate Commission (TREC) adopts amendments to §535.56, concerning Education and Experience Requirements for a Broker License, with changes as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9169). The difference between the rule as proposed and as finally adopted is the deletion of subsection (j) which established an effective date of January 1, 2012. Under current §535.56, the commission has waived the education and experience required for a broker license for a broker who was licensed as a broker in the preceding two years and otherwise

meets the requirements of the subsection. The rule as amended conforms subsection (h) by deleting a sentence which implies that a person previously licensed as a salesperson may become a broker under the waiver.

The reasoned justification for the amendment is to make consistent all the subsections in §535.56.

The revision to the rule as adopted does not change the nature or scope so much that they could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed version and does not materially alter the issues raised in the proposed rule. The change in the rule reflects a non-substantive variation from the proposed rule to make the affected rule consistent with other rules.

No comments were received on the rule as proposed.

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

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

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

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

(1) Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.

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

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

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

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

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

(3) Failure to promptly provide the requested documentation or proof shall be grounds to deny the application. Any false claim

of experience shall be grounds to deny the application, or shall be grounds to suspend or revoke the applicant's current license.

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

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

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

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

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

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

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

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

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

(3) Farm and Ranch transactions:

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

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

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

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

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

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

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

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

(1) The applicant was licensed as a Texas real estate broker within two years prior to the filing of the application.

(2) The applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.

(3) The applicant has at least two years of active experience as a licensed real estate broker or salesperson during the four-year period prior to the filing of the application.

(i) Forms and affidavits required to be used to report experience under this section are adopted by reference, published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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

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Loretta R. DeHay

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Texas Real Estate Commission

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



SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §§535.71, 535.72, 535.75

The Texas Real Estate Commission (TREC) adopts amendments to §535.71, concerning Approval of Providers, Courses and Instructors, §535.72, concerning Presentation of Courses, Advertising and Records, without changes to the proposed text and new §535.75, concerning Education Curriculum Standards Committee with changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9170). The difference between the rules as proposed and as finally adopted is that new §535.75(b)(3) was revised to delete "who are not accredited, approved, registered, certified, or licensed by the Texas Real Estate Commission" to provide flexibility in appointing public members to the newly created Education Curriculum Standards Committee. The amendments are adopted in part to implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.458 to require a broker who sponsors a salesperson and a licensee who supervise another licensee to take a 6 hour broker responsibility course to renew a license.

The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it handles the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency.

New §535.75 creates the Education Curriculum Standards Committee whose mission is to regularly review and revise curriculum standards, course content requirements and instructor certification.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules.

No comments were received concerning the amendments and new rule as proposed.

The reasoned justification for the amendments and new rule is to provide consistency with the requirements of Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

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

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

§535.75. *Education Curriculum Standards Committee.*

(a) The function of the Education Curriculum Standards Committee (the committee) is to regularly review and revise curriculum standards, course content requirements and instructor certification requirements for core and MCE courses.

(b) The committee consists of 12 members appointed by the commission as follows:

(1) Six members who have been engaged in the practice of real estate for at least five years before the member's appointment and who are actively engaged in that practice;

(2) Three members who are real estate instructors or owners of real estate schools accredited by the commission that provide core or continuing education;

(3) Three members who represent the public.

(c) The Commission may appoint a non-voting member from the commission.

(d) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) Members of the committee serve two-year terms, expiring on February 1 of each even-numbered year. A member may serve up to three consecutive terms on the committee, and may be reappointed after a break in service of at least two years. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(f) At a regular meeting in May of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(g) The commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Chapter 1101 or Chapter 1102.

(h) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the potential officer of the commission that the potential ground exists.

(i) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(j) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the commission.

(k) A quorum of the committee consists of seven members.

(l) The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(m) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.

(n) The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission after each meeting at which the proposed rule is discussed on the committee's consideration of the rule.

(o) The committee is automatically abolished on September 1, 2020 unless the commission subsequently establishes a different date.

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

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SUBCHAPTER H. RECOVERY FUND

22 TAC §535.82

The Texas Real Estate Commission (TREC) adopts new §535.82, concerning Proration of Payments from the Recovery Trust Account, without changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9173). The new rule will not be republished. Under

Subchapter M of Chapter 1101, Occupations Code, the commission administers the Real Estate Recovery Trust Account. The new rule clarifies provisions of Subchapter M, regarding proration of claims in the event of multiple claims that exceed the payment limitations of \$50,000 per transaction and \$100,000 per licensee.

The reasoned justification for the new rule is clarity in the process of prorating claims and an emphasis on paying actual damages first, consistent with Texas Occupations Code, §1102.610(c), and the consumer protection objectives of Chapter 1101.

No comments were received on the new rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statutes affected by this new rule are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the new rule.

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.221

The Texas Real Estate Commission (TREC) adopts an amendment to §535.221, concerning Advertisements without changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9174) and will not be republished. The amendment changes the requirement that inspectors immediately notify the Commission of the inspector's use of an assumed name in the inspection business, instead allowing 30 days for such notice.

The reasoned justification for the amendment as adopted is clarity and consistency with other license types regulated by the agency.

No comments were received regarding the amendment as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statutes affected by this adoption are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the amendment.

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

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22 TAC §535.240

The Texas Real Estate Commission (TREC) adopts new §535.240, concerning Proration of Payments from the Real Estate Inspection Recovery Fund, without changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9174) and will not be republished. The new rule clarifies provisions of Texas Occupations Code, §1102.359, regarding proration of claims in the event of multiple claims that exceed the payment limitations of \$12,500 per transaction and \$30,000 per inspector.

The reasoned justification for the new rule is clarity in the process of prorating claims and an emphasis on paying actual damages first, consistent with Texas Occupations Code, §1102.359(d), and the consumer protection objectives of Chapter 1102.

No comments were received regarding the new rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statutes affected by this rule are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the rule.

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

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §§535.400, 535.403 - 535.405

The Texas Real Estate Commission (TREC) adopts amendments to §535.400, concerning Registration of Easement or

Right-of-Way Agents, and §535.403, concerning Renewal of Registration, and new §535.404, concerning Fees, and new §535.405, concerning Employee of Owner or Purchaser, without changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9175). The new and amended rules will not be republished. The amendments increase the registration fee from \$80 for a one-year registration to \$200 for a two-year registration; and the renewal fee \$160 (\$80 per year) to \$200 for a two-year registration. New §535.405 clarifies that an employee of an owner or purchaser of an easement or right-of-way is not required to be registered under the Act.

The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a nonrefundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

The amendments and new sections are adopted under Texas Occupations Code, §1101.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1101.

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

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §5.4201

The Commissioner of Insurance (Commissioner) adopts new Division 4, §5.4201. Section 5.4201 is adopted with changes to the proposed text published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6864).

REASONED JUSTIFICATION. Section 5.4201 is necessary to implement new Insurance Code §2210.582, enacted in House Bill 3 (HB 3), 82nd Legislature, 2011, First Called Session. Section 2210.582 requires the Department to establish an ombudsman program to provide information and educational programs that will assist persons insured by the Texas Windstorm Insurance Association (Association) with the claim processes under Subchapter L-1, Chapter 2210, Insurance Code.

In response to written comments on the published proposal, the Department has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

The Insurance Code §2210.580 does not directly reference §2210.582; however, §2210.580 states legislative intent that all rules adopted under §2210.580 to implement the Association's claim processes must promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel. The ombudsman program is essential to implementing that intent.

Section 5.4201(a) establishes the Coastal Outreach and Assistance Services Team (COAST) Program to satisfy the ombudsman requirement in Insurance Code §2210.582. In response to comments, the language of §5.4201(a) has been amended from the proposed text to exactly restate the statutory requirement. The change is not considered substantive, but is made to avoid potential confusion.

Section 5.4201(b) states that the COAST Program will be administered by the Department, as required under Insurance Code §2210.582(f). As an administered program, the Department will have exclusive control over the staffing, location, equipment, and operations of the COAST Program.

Section 5.4201(c) addresses COAST Program staffing. The COAST Program will rely on an ombudsman and a sufficient staff to support the COAST Program's purpose. Funding for regular staff will be provided through the annual budget process set forth in §5.4201(d), which is described below. The number of COAST Program staff may be increased to support the increased number of policyholders requiring assistance following a catastrophic event. Funding for the additional staff would be granted through the amended budget process set

forth in §5.4201(d)(2), as authorized in the Insurance Code §2210.582(d).

The Insurance Code §2210.582(c) requires the Association to fund all expenses incurred in administering and operating the program. Section 5.4201(d) sets forth funding provisions for the COAST Program. These provisions are consistent with Insurance Code §2210.582(b) - (d). In response to comments, the language of §5.4201(d) has been amended from the proposed text.

Section §5.4201(d)(1) describes the budget process that is set forth in Insurance Code §2210.582(b) and (c). Because this budget is determined yearly, it is referred to in §5.4201(d)(1) as the annual budget. Section §5.4201(d)(2) describes the process of amending the budget following a catastrophic event. This post-catastrophic event budget is referred to in §5.4201(d) as the amended budget.

The annual budget process is set forth in the statute and included in the adopted section to provide the reader with the complete process. As required by statute, the Department is to propose the budget by March 1 of each year to the Commissioner. The Commissioner must adopt, or modify and adopt, the COAST Program budget not later than April 1 of each year. The Association must transfer the budgeted amount adopted by the Commissioner to the Department for the COAST Program not later than May 1 of each year. The statute does not require a rule to implement the annual budget process. The statute does not include additional requirements that the annual budget be in a particular form, be adopted by Commissioner order, or be submitted to the Association in a particular form, and the rule does not create these additional requirements.

In contrast, Insurance Code §2210.582(d) requires the Commissioner to adopt necessary rules concerning the amended budget process, including the transfer of additional money required to fund the amended budget. Section 5.4201(d)(2) addresses the procedures and requirements implementing the amended budget process.

Consistent with the Insurance Code §2210.582(d), §5.4201(d)(2)(A)(i) and (ii) provide that the Department must, not later than 60 days following a catastrophic event, submit an amended budget to the Commissioner for approval and report to the Commissioner on the approximate number of claimants eligible for COAST Program services. Section 5.4201(d)(2)(B) provides that the Commissioner may modify the amended budget before adopting it. Again, this requirement is consistent with the statute, which does not require that the amended budget be adopted by order or specify the form of the budget.

Section 5.4201(d)(2)(C) has been changed to provide that the Association must transfer additional money required to fund the adopted COAST Program amended budget within 30 days of the adoption of the amended budget, which is consistent with the 30-day statutory time period of April 1 to May 1 for funding the annual budget. It is not necessary for the Commissioner to issue an additional order to require the Association to comply with Department rules.

Section 5.4201(d)(3) has been added to the adopted text to clarify the application of the return of funds provision stated in Insurance Code §2210.582(c). The statute requires the COAST Program to return to the Association unexpended funds that were received in the previous year, not later than April 30 of each year. The location of the requirement in Insurance Code §2210.582(c) demonstrates that it applies to annual budget

funds. The adopted text clarifies that the requirement also provides an orderly process for returning unexpended amended budget funds. Thus, §5.4201(d)(3) applies to both unexpended annual and amended budget funds received in the previous year. Section 5.4201(d)(3) does not require the return of unexpended funds that have been received prior to April 30 in the same year. Section 5.4201(e) sets forth that the COAST Program may provide information and educational programs through the means that the COAST Program determines to be necessary and appropriate. The means listed in §5.4201(e) are consistent with those listed in the Insurance Code §2210.582(e). This subsection emphasizes that the COAST Program can be flexible in selecting the appropriate means to reach its intended audience.

The Insurance Code §2210.582(h) requires the Association to notify each of its policyholders about the ombudsman program as prescribed by the Commissioner by rule. Section 5.4201(f) specifies how the Association must fulfill that requirement. The Association must include the required COAST Program notice with or within documents being sent at policy issuance and renewal and with communications concerning receipt, acceptance, or denial of claims. Section 5.4201(f) provides that these documents may be sent with other notices, including the Important Notice required by §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) and the written notice accepting or denying coverage for a claim required by the Insurance Code §2210.573(d). The requirement is not retroactive, because the Association policy form was amended to include the notice in its new and renewal policies issued on and after November 27, 2011. Sending the notice in this manner should make the notice more accessible and timely to policyholders and reduce costs for the Association. A nonsubstantive change was made to §5.4201(f) to correct the term "notices" to "notice." Section 5.4201(g) provides the notice contents required by §5.4201(f) in both English and Spanish.

HOW THE SECTION WILL FUNCTION. Section 5.4201 establishes the COAST Program to fulfill the Insurance Code §2210.582 requirement to establish an ombudsman program to provide information and educational programs to assist Association policyholders with the claim processes under the Insurance Code Chapter 2210, Subchapter L-1. Section 5.4201 further sets forth procedures for adopting and funding the COAST Program budget, adopting and funding an amended budget following a catastrophic event, and the procedure that the Association shall use to notify policyholders about the COAST Program and its services.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 5.4201(a).

Comment: A commenter stated that language in subsection (a) and the use of the term "including" could be read to extend the functions of the COAST Program beyond the scope of the statutory authorization in Insurance Code §2210.582(a). The commenter suggests that the language be limited to the statutory provision.

Agency Response: The inclusion of subsection (a) is to provide the reader with the purpose of the COAST Program under the statute and was not intended to extend the program's functions. To avoid potential confusion, the Department has made the suggested change.

Section 5.4201(d).

Comment: A commenter suggests that the subsection be changed to create two subdivisions. The first subdivision would address the COAST Program's "annual budget" procedure under Insurance Code §2210.582(b) and (c). The second subdivision would address the COAST Program's "amended budget" procedure under Insurance Code §2210.582(d). The suggested change would also remove the phrase "on a yearly basis" from §5.4201(d).

Agency Response: The Department agrees and has made the suggested changes. The Department will use the terms "annual budget" and "amended budget."

Comment: A commenter suggests that §5.4201(d) specify that the Commissioner must issue an order adopting the annual budget and the amended budget.

Agency Response: Insurance Code §2210.582 does not require the "annual budget" or the "amended budget" to be adopted by order. Insurance Code §2210.582(b) requires the Commissioner to adopt or modify and adopt the annual budget. Insurance Code §2210.582(d) requires the Department to submit an amended budget to the Commissioner for approval.

Insurance Code §2210.582(b) compels the Association to, not later than May 1 of each year, transfer money in an amount equal to the adopted annual budget amount to the COAST Program. Insurance Code §2210.582(d) requires the Commissioner to establish rules regarding the transfer of additional money required under the amended budget from the Association to the COAST Program.

The Department administers the COAST Program under Insurance Code §2210.582(f) and has exclusive authority to determine how budgeted funds are spent to fulfill the COAST Program's statutory requirements. The Commissioner is the Department's chief executive and administrative officer, under Insurance Code §31.021. The Commissioner does not administer the Department through orders.

Adoption of the annual budget is a Commissioner decision concerning a Department administered activity. The Commissioner is not required to issue orders to the Department concerning its administrative activity. Insurance Code §2210.582(c) sets the annual budget process and requires the Association to transfer the adopted budget amount not later than May 1 of each year. Thus, neither the adopted section nor an order is required to implement funding of the annual budget.

Approval of the amended budget is also a Commissioner decision concerning a Department administered activity and likewise an order would not be required for that approval. Insurance Code §2210.582(d) states that the transfer of the amended budget will be determined by rule. The proposed section required the Association to transfer the additional amended budget funds within 15 days of the adoption of the amended budget. As this requirement set a definite period, a specific requirement for an order implementing the period was not necessary. As the section has been revised, §5.4201(d)(2)(C) establishes the requirement that the Association shall transfer additional money required to fund the adopted COAST Program amended budget within 30 days of the adoption of the amended budget, which is an extension of the 15-day period set forth in the proposal and consistent with the 30-day statutory time period of April 1 to May 1 for funding the annual budget. It is not necessary for the Commissioner to issue an additional order to require the Association to comply with Department rules.

Comment: A commenter suggests that §5.4201(d) specify criteria for budget items and requirements that they comply with legislative requirements. The commenter provides suggested language that the budgets specifically state: (1) staff and salaries; (2) each area of a specific expenditure; (3) differences in the proposed and adopted budgets and the reason for the difference; and (4) how the approved funds will fulfill the legislative requirements.

Agency Response: Legislative requirements concerning the COAST Program are set forth in Insurance Code §2210.582. As provided in Insurance Code §32.021, the Commissioner is the chief executive and administrative officer of the Department and charged with administering and enforcing the Insurance Code. As chief executive officer, the Commissioner is responsible for determining that the annual budget and amended budget are in compliance with the requirements of the Insurance Code. The suggested rule requirements are unnecessary.

The legislature has not prescribed the form of the budget. The Commissioner and Department may prepare the budget in a form that complies with the requirements of the Department, which administers the COAST Program. The Department has not made changes to the proposed text based on this comment.

Comment: A commenter suggests that the time period in §5.4201(d) for transferring money under the amended budget be extended from within 15 days to within 30 days after the amended budget is adopted. The commenter is concerned that the Association may not have sufficient time to convene a meeting of the Association's board of directors within the 15-day period to authorize the transfer if the required amount exceeds management's preauthorized payment authority.

Agency Response: As addressed in a prior response, the legislature provided a 30-day time period of April 1 to May 1 for funding the annual budget. The adopted section has been changed to establish a similar 30-day funding period following the adoption of the amended budget.

Comment: A commenter suggests that §5.4201(d) state that unexpended funds from the annual budget and amended budget be returned to the Association not later than April 30 of each year.

Agency Response: The Department agrees that it is necessary to clarify the procedure concerning the return of funds. Section 5.4201(d)(3) has been added to the adopted text to clarify the application of the return of funds provision stated in Insurance Code §2210.582(c). The statute requires the COAST Program to return to the Association unexpended funds that were received in the previous year, not later than April 30 of each year. The location of the requirement in Insurance Code §2210.582(c) demonstrates that it applies to annual budget funds. The adopted text clarifies that the requirement also provides an orderly process for returning unexpended amended budget funds. Thus, §5.4201(d)(3) applies to both unexpended annual and amended budget funds received in the previous year.

Comment: A commenter suggests changing "not" to "no" in certain statements in §5.4201(d).

Agency Response: The Department disagrees with this comment because the text conforms to the statute. The Department has not made the suggested change.

Section 5.4201.

Comment: A commenter suggests that the rule require the COAST Program to provide a report to the Association evaluating the extent to which the COAST Program met the objectives described in Insurance Code §2210.582. The commenter suggests that the report would assist the Association in preparing its legislative reports on the performance of the Association and the Association's board of directors required under Insurance Code §2210.107.

Agency Response: Insurance Code §2210.582 provides that the Department, not the Association, is responsible for the administration of the COAST Program. Insurance Code §2210.582 does not require the requested report. The Commissioner and the Department will report to the legislature on the activities of the COAST Program as required by statute and requested by the legislature. The Department has not made a change based on this comment.

NAMES OF THOSE COMMENTING ON THE PROPOSAL.

Neither For nor Against the proposal, with suggested changes: Texas Windstorm Insurance Association.

STATUTORY AUTHORITY. Section 5.4201 is adopted under §§2210.008, 2210.580, 2210.582, and 36.001 of the Insurance Code. The Insurance Code §2210.008(a) authorizes the Commissioner to issue orders that the Commissioner considers necessary to implement Chapter 2210. The Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, of the Insurance Code. Section 2210.580(b) requires that all rules adopted under §2210.580 shall promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

Section 2210.582(a) of the Insurance Code directs the Department to establish an ombudsman program to provide information and educational programs to assist persons insured under Chapter 2210 of the Insurance Code with the claim processes under Subchapter L-1, Chapter 2210. Section 2210.582(d) provides that the Commissioner shall adopt rules as necessary to implement an amended budget submitted after a catastrophic event, including rules regarding the transfer of additional money from the Association to the ombudsman program. Section 2210.582(h) provides that the Association, in the manner prescribed by the Commissioner by rule, shall notify each person insured under the Insurance Code Chapter 2210 concerning the operation of the ombudsman program. Section 2210.582(i) provides that the Commissioner may adopt rules as necessary to implement §2210.582. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§5.4201. *Coastal Outreach and Assistance Services Team (COAST) Program.*

(a) Establishment. The Texas Department of Insurance (department) establishes the Coastal Outreach and Assistance Services Team (COAST) Program to provide information and educational programs to assist persons insured under Chapter 2210 of the Insurance Code with the claim processes prescribed under Subchapter L-1, Chapter 2210 of the Insurance Code.

(b) Administration. The COAST Program is administratively attached to the department and will be administered by the department.

(c) Staffing. The COAST Program will include an ombudsman familiar with the claim processes prescribed under Subchapter L-1, Chapter 2210, of the Insurance Code, as well as sufficient staff to support its purpose. If a catastrophic event occurs, the COAST Program may expand as necessary to support the increased number of policyholders requiring assistance.

(d) Funding. The COAST Program will be funded by the Texas Windstorm Insurance Association (the Association).

(1) Annual budget.

(A) The funding year shall be from May 1 of each year to April 30 of the following year.

(B) Not later than March 1 of each year, the department shall prepare and submit to the Commissioner of Insurance (commissioner) a budget for the COAST Program, including approval of all expenditures incurred to administer and operate the COAST Program. The department may include ongoing ombudsman activities related to a prior catastrophic event in the annual budget request. The commissioner will adopt or modify and adopt the budget not later than April 1 of each year.

(C) Not later than May 1 of each year, the Association shall transfer the budgeted amount adopted by the commissioner to the department for the COAST Program.

(2) Amended budget.

(A) Not later than 60 days after a catastrophic event, the department shall:

(i) prepare and submit an amended budget to the commissioner for approval, including staffing requirements and expenditures necessary to administer and operate the COAST Program; and

(ii) report to the commissioner the number of claimants eligible for COAST Program services.

(B) The commissioner may modify the amended budget before adopting it.

(C) Within 30 days after the commissioner adopts the amended budget, the Association must transfer the additional money required by the amended budget to the department for the COAST Program.

(3) Return of unexpended funds. Not later than April 30 of each year, the department must return to the Association any unexpended funds that the COAST Program received from the Association in the previous year.

(e) Services.

(1) The COAST Program may provide to persons insured under Chapter 2210 of the Insurance Code information and educational programs through means the COAST Program determines to be necessary and appropriate. Possible means include:

- (A) informational materials;
- (B) toll-free telephone numbers;
- (C) public meetings;
- (D) outreach centers;
- (E) the Internet; and
- (F) other reasonable means.

(2) The COAST Program shall prepare and make available to each person insured under Chapter 2210 of the Insurance Code information describing the functions of the COAST Program.

(f) Notice Requirement. The Association must provide each person insured by the Association on or after November 27, 2011, notice of the operation of the COAST Program. The Association shall fulfill this requirement by complying with paragraphs (1), (2), and (3) of this subsection.

(1) The Association must include the notices set forth in subsection (g)(1) and (2) of this section with each policy delivered, issued for delivery, renewed, or otherwise processed by the Association. Notwithstanding §1.601(a)(3) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures), the Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the policy or by incorporating the notice into the Important Notice required to be attached to the policy under §1.601 of this title.

(2) The Association must include the notice set forth in subsection (g)(1) of this section with each written communication acknowledging receipt of a claim. The Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the communication acknowledging receipt of a claim or by incorporating the notice into the acknowledgement.

(3) The Association must include the notice set forth in subsection (g)(1) of this section with each written communication accepting or denying coverage of a claim, in whole or in part, that is required to be provided to the claimant under the Insurance Code §2210.573(d). The Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the acceptance or denial communication or by incorporating the notice into the acceptance or denial document.

(g) Notice. The notice required by subsection (f) of this section must include the following text and be in at least 10 point type.

(1) "The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please refer to the COAST Program website at www.tdi.texas.gov/COAST; email ConsumerProtection@tdi.state.tx.us; call toll-free 1-855-352-6278; or write to COAST Program - MC 111-1A, Texas Department of Insurance, PO Box 149104, Austin, TX 78714-9104."

(2) "El Departamento de Seguros de Texas ha establecido el Programa de Alcance Comunitario y Servicios de Asistencia para el Área Costera (Coastal Outreach and Assistance Services Team (COAST) Program, por su nombre y siglas en inglés) para ayudar a los consumidores a entender el proceso de las reclamaciones de TWIA. Para obtener ayuda del Programa COAST, visite el sitio Web del Programa COAST en www.tdi.texas.gov/COAST; por medio de correo electrónico a ConsumerProtection@tdi.state.tx.us; o llame gratis al 1-855-352-6278; o escriba al Programa COAST - MC 111-1A, Texas Department of Insurance, PO Box 149104, Austin, TX 78714-9104."

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 February 28, 2012.

TRD-201201234



TITLE 34. PUBLIC FINANCE

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 127. MISCELLANEOUS RULES

34 TAC §127.7

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") adopts amendments to 34 TAC §127.7, regarding a distributee's election to have any portion of an "eligible rollover distribution" from TMRS to be paid directly to an eligible retirement plan in a direct rollover. The amended rule is adopted without changes to the proposed text as published in the December 16, 2011, issue of the *Texas Register* (36 TexReg 8498).

Texas Government Code §852.103 provides that the Texas Municipal Retirement System shall, in accordance with §401(a)(31) of the Internal Revenue Code of 1986, as amended (the "Code") and related regulations, permit a distributee of an eligible rollover distribution to elect to have the distribution paid directly to an eligible retirement plan in the form of a direct trustee-to-trustee transfer, and authorizes the TMRS Board to adopt rules to implement §852.103. Code §401(a)(31) provides that, for purposes of §401(a)(31), the terms "eligible rollover distribution" and "eligible retirement plan" shall have the meanings given to such terms in Code §402. Compliance with Code §401(a)(31) is one of the requirements for a qualified plan under the Code. The Board of Trustees of the Texas Municipal Retirement System has previously adopted rules regarding trustee-to-trustee transfers and rollovers, including §127.7 which sets forth rules regarding the ability of a distributee to elect to have any portion of an eligible rollover distribution from the Texas Municipal Retirement System be paid directly to an eligible retirement plan in a direct rollover.

The federal Pension Protection Act of 2006 (the "Pension Protection Act") amended certain Code provisions relating to rollovers from qualified plans and requires qualified plans that are governmental plans, such as TMRS, to be amended by the end of the 2011 plan year (December 31, 2011 for TMRS) to reflect such changes to the Code's rollover provisions to (i) permit members to make direct rollovers from a plan to a Roth IRA, (ii) permit members to directly rollover any after-tax contributions from the plan to eligible defined benefit, defined contribution, or 403(b) plans, and (iii) permit non-spouse beneficiaries to transfer amounts from the plan directly to an inherited IRA. The Pension Protection Act provides that pending the plan amendment deadline, a plan may be operated in accordance with any Pension Protection Act provision once such provision becomes effective. The Texas Municipal Retirement System is currently operating in accordance with these rollover provisions of the Pension Protection Act.

Emergency amendments to 34 TAC §127.7 were filed with the Office of the Secretary of State on December 2, 2011 and pub-

lished in the *Texas Register* on December 16, 2011, with a stated effective date of December 2, 2011 (36 TexReg 8469). Under applicable law, the emergency amendments to Rule §127.7 will expire on March 30, 2012. The proposed amendments to Rule §127.7 were also filed on December 2, 2011 and published in the *Texas Register* on December 16, 2011, for final adoption by the Board at a later date. The final adoption of the proposed amendments occurred at the TMRS Board meeting held on February 17, 2012.

The final adoption of the amendments amend 34 TAC §127.7 to continue in effect the amendments made by the emergency amendments and reflect the applicable rollover provisions enacted by the Pension Protection Act to (i) permit members to make direct rollovers from the Texas Municipal Retirement System to a Roth IRA, (ii) permit members to directly rollover any after-tax contributions from the Texas Municipal Retirement System to eligible defined benefit, defined contribution, or 403(b) plans, and (iii) permit non-spouse beneficiaries to transfer amounts from the Texas Municipal Retirement System directly to an inherited IRA. The adopted amendments further provide that the Board of Trustees, the Texas Municipal Retirement System and its employees and agents are not responsible for assuring that the distributee is eligible to make a rollover or for the tax consequences of any such rollover.

A result of administering the adopted amendment would be to continue the current TMRS rollover process, which is operating in accordance with the above-described rollover provisions of the Pension Protection Act, and have the written plan provisions reflect such rollover procedures. Individuals who might be affected by the amendment are TMRS members, retirees, and beneficiaries; however, there will not be any noticeable change in the operations of the TMRS rollover process as a result of the rule amendment because the amendments reflect the rollover process currently in operation.

Summary of Comments: No comments were received.

Statutory Authority: The amendments are adopted under Texas Government Code §852.103, which authorizes the Board to adopt rules to implement §852.103 as it relates to Code §401(a)(31) and direct rollovers, under Texas Government Code §855.607, which authorizes the Board to adopt rules that modify the plan to the extent the Board considers necessary for the retirement system to be considered a qualified plan under the Code, and under Texas Government Code §855.102, which grants the Board authority to adopt rules necessary or desirable for the efficient administration of the retirement system.

Cross-reference to Statute: The adopted amendments implement Texas Government Code §852.103, which provides that the Texas Municipal Retirement System shall, in accordance with §401(a)(31) of the Code and related regulations, permit a distributee of an eligible rollover distribution to elect to have the distribution paid directly to an eligible retirement plan in the form of a direct trustee-to-trustee transfer, and Texas Government Code §855.607, which provides that the Board may adopt rules that modify the plan to the extent the Board considers necessary for the retirement system to be considered a qualified plan.

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 March 2, 2012.
TRD-201201275

David Gavia
Executive Director
Texas Municipal Retirement System
Effective date: March 22, 2012
Proposal publication date: December 16, 2011
For further information, please call: (512) 225-3754



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.

Agency Rule Review Plan

Texas Council for Developmental Disabilities

Title 40, Part 21

TRD-201201251

Filed: February 29, 2012



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 89, concerning Property Tax Lenders. Chapter 89 contains Subchapter A, concerning General Provisions; Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Disclosures; Subchapter F, concerning Costs and Fees; and Subchapter G, concerning Transfer of Tax Lien.

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-201201313

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 7, 2012



Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Part 14, Chapter 277, pursuant to the requirements of Texas Government Code, §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 277, concerning Practice and Procedure, and has determined that the reasons for initially adopting the rules continue to exist: §277.1, Complaint Procedures; §277.2, Disciplinary Proceedings; §277.3, Probation; §277.4, Reinstatement; §277.5, Convictions; §277.6, Administrative Fines and Penalties; §277.7, Patient Records; §277.8, Emergency Temporary Suspension or Restriction; and §277.9, Alternative Dispute Resolution.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. 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*.

TRD-201201293

Chris Kloeris

Executive Director

Texas Optometry Board

Filed: March 6, 2012



The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Part 14, Chapter 279, pursuant to the requirements of Texas Government Code, §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 279, concerning Interpretations, and has determined that the reasons for initially adopting the rules continue to exist: §279.1, Contact Lens Examination; §279.2, Contact Lens Prescriptions; §279.3, Spectacle Examination; §279.4, Spectacle and Ophthalmic Devices Prescriptions; §279.5, Dispensing Ophthalmic Materials; §279.9, Advertising; §279.10, Professional Identification; §279.11, Relationship with Dispensing Optician - Books and Records; §279.12, Relationship with Dispensing Optician - Separation of Offices; §279.13, Board Interpretation Number Thirteen; §279.14, Patient Files; and §279.15, Board Interpretation Number Fifteen.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. 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*.

TRD-201201294
Chris Kloeris
Executive Director
Texas Optometry Board
Filed: March 6, 2012



The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Part 14, Chapter 280, pursuant to the requirements of Texas Government Code, §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 280, concerning Therapeutic Optometry, and has determined that the reasons for initially adopting the rules continue to exist: §280.1, Application for Certification; §280.2, Required Education; §280.3, Certified Therapeutic Optometrist Examination; §280.5, Prescription and Diagnostic Drugs for Therapeutic Optometry; §280.8, Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation; §280.9, Application for Licensure as Optometric Glaucoma Specialist; §280.10, Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs; and §280.11, Treatment of Glaucoma by an Optometric Glaucoma Specialist.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. 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*.

TRD-201201295
Chris Kloeris
Executive Director
Texas Optometry Board
Filed: March 6, 2012



Texas Workforce Investment Council

Title 40, Part 22

Pursuant to Texas Government Code §2001.039, Agency Review of Existing Rules, the Texas Workforce Investment Council (Council) proposes the review of 40 Texas Administrative Code (TAC) Part 22, Chapter 901, Designation and Redesignation of Local Workforce Development Areas, §901.1, Procedures for Considering Redesignation of Workforce Development Areas; and §901.2, Appeal of Decision on Designation or Redesignation.

An assessment will be made by the Council as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be conducted during the review process. Each rule will be reviewed, at a minimum, to determine whether the reason for the rule continues to exist and whether the rule reflects current procedures of the Council.

Questions regarding this rule review should be directed to Lee Rector, Director, by telephone at (512) 936-8100 or email to rector@governor.state.tx.us.

Comments on this review must be submitted to the Council in writing and be postmarked no later than 30 days from the date this proposal is published in the *Texas Register*. Comments may be: mailed to Lee Rector, Director, Texas Workforce Investment Council, Post Office Box 2241, Austin, Texas 78768-2241; faxed to (512) 936-8118; or emailed to twic@governor.state.tx.us.

TRD-201201274
Lee Rector
Director
Texas Workforce Investment Council
Filed: March 2, 2012



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 95, Commissioner's Rules Concerning Education Research Centers, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 95 in the December 16, 2011, issue of the *Texas Register* (36 TexReg 8577).

The TEA finds that the reasons for adopting 19 TAC Chapter 95 continue to exist and readopts the rule. The TEA received no comments related to the review of Chapter 95. At a later date, the TEA plans to propose an amendment to §95.1001, Operation of Education Research Centers, to update and clarify procedures.

This concludes the review of 19 TAC Chapter 95.

TRD-201201311
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 7, 2012



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 chapters of the Texas Administrative Code, Title 28, Part 2: Chapter 64, Representing Claimants Before the Board. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5957). 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.

As a result of the review, the Division has determined that the reason for adoption of the sections continues to exist and the sections are retained.

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 64; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201201296
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 6, 2012



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 chapters of the Texas Administrative Code, Title 28, Part 2: Chapter 67, Allegations of Fraud. 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 September 9, 2011, issue of the *Texas Register* (36 TexReg 5957). 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.

As a result of the review, the Division has determined that the reasons for adoption of the sections continue to exist and the sections are retained. 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 67; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201201297
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 6, 2012



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 chapters of the Texas Administrative Code, Title 28, Part 2: Chapter 104, General Provisions--Rule-Making. 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 September 9, 2011, issue of the *Texas Register* (36 TexReg 5958). As provided in that 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. 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 104; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201201298
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 6, 2012



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 chapters of the Texas Administrative Code, Title 28, Part 2: Chapter 109, Workers' Compensation Coverage for State Employees. 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 September 9, 2011, issue of the *Texas Register* (36 TexReg 5958). As provided in that 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. 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 109; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201201299
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 6, 2012



State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8259), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapter of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 133, Forms.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts this chapter pursuant to the requirements of the Texas Government Code.

As part of the review process, the Board identified an amendment was needed to Form 133.13. Notices of the proposed repeal of Form 133.13 and the adoption of a new Form 133.13 will be published in the "Proposed Rules" section of a future issue of the *Texas Register*, in accordance with the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

No comments were received regarding the readoption of Chapter 133.

This concludes the review of 7 TAC Chapter 133.



TRD-201201250

John Morgan

Securities Commissioner

State Securities Board

Filed: February 29, 2012

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.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/12/12 - 03/18/12 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 03/12/12 - 03/18/12 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 03/01/12 - 03/31/12 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 03/01/12 - 03/31/12 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-201201285

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 5, 2012



Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2012 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2012 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than June 30, 2013; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

The State of Texas (Texas Education Agency) has chosen to submit a 2012 State Application providing assurances the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at <http://www.tea.state.tx.us/index2.aspx?id=2147493812>. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the TEA Division of Federal and State Education Policy at (512) 463-9414.

Procedures for Submitting Written Comments About the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to the Texas Education Agency, Division of Federal and State Education Policy, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to sped@tea.state.tx.us.

Timetable for Submitting the Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2012 to the Secretary of Education for Approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before May 10, 2012.

For more information, contact the TEA Division of Federal and State Education Policy by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at sped@tea.state.tx.us.

TRD-201201310

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: March 7, 2012



Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas (Physical Address: 200 E. 18th Street, Austin, Texas 78701; Mailing Address: P.O. Box 13207, Austin, Texas 78711-3207; ATTN: Chris Wood, ERS Purchasing Team Lead) in relation to a contract award for Request for Proposals to Provide Third Party Administrative Services for HealthSelectSM of Texas; Requisition No. 327-95856-110601.

On February 21, 2012, a contract was awarded to and executed with United HealthCare Services, Inc., 9900 Bren Road East, Minnetonka, MN 55343. The cost of the contract is estimated to be \$205 million.

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 16, 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 April 16, 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: AARIN C-STORE, INCORPORATED dba Stop N Joy; DOCKET NUMBER: 2011-1834-PST-E; IDENTIFIER: RN102366309; LOCATION: Houston, Harris 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 proper release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,679; ENFORCEMENT COORDINATOR: Kimberly Walker, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: APRIL PLAZA MARINA, INCORPORATED; DOCKET NUMBER: 2011-0803-MWD-E; IDENTIFIER: RN101611200; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and §317.4(g)(4)(B)(iii) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011693001, Operational Requirements Number 1, by failing to provide back-up blower capacity; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011693001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal

are properly operated and maintained; 30 TAC §305.125(1) and §319.4, and TPDES Permit Number WQ0011693001, Monitoring and Reporting Requirements Number 1, by failing to monitor effluent samples at intervals specified in the permit; and 30 TAC §305.125(1) and §319.1, and TPDES Permit Number WQ0011693001, Monitoring and Reporting Requirements Number 1, by failing to submit accurate data to the TCEQ; PENALTY: \$10,646; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2011-2168-MWD-E; IDENTIFIER: RN101513729; LOCATION: Niederwald, Hays County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013293001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; TPDES Permit Number WQ0013293001, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to submit complete monitoring results at the intervals specified in the permit; and TPDES Permit Number WQ0013293001, Sludge Provisions and 30 TAC §305.125(17), by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$3,479; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Ascend Performance Materials, LLC; DOCKET NUMBER: 2011-1185-AIR-E; IDENTIFIER: RN100238682; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §113.620 and §122.143(4), 40 Code of Federal Regulations (CFR) §63.10(d)(5)(i) and §63.1211(a), Federal Operating Permit (FOP) Number O-02321, Special Terms and Conditions (STC) 1.A., and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the Hazardous Waste Combustor Maximum Achievable Control Technology reports within 30 days of the end of each semiannual period; 30 TAC §122.143(4), FOP Number O-02321, General Terms and Conditions (GTC) and STC 3.B.(iv)(3), and THSC, §382.085(b), by failing to record all quarterly visible emissions observations for Heaters 30H1, 31H1-1, and 31H1-2; 30 TAC §§115.725(d)(3), 116.115(c), and 122.143(4), New Source Review Permit (NSRP) Numbers 18251 and N-011, Special Conditions (SC) Number 19.E., FOP Number O-02321, STC 1.A. and 18, and THSC, §382.085(b), by failing to operate the flare flow meter for the Acrylonitrile (AN) 2 flare, Emission Point Number (EPN) 30Z7, at least 95% of the total hours of operation in 2009; 30 TAC §§115.126(1)(B), 116.115(c), and 122.143(4), 40 CFR §60.18(c)(3)(ii) and §63.11(b)(6)(ii), NSRP Numbers 18251 and N-011, SC Numbers 3 and 5, FOP Number O-02321, STC 1.A. and 18, and THSC, §382.085(b), by failing to maintain the net heating value of two flares (EPNs 30Z7 and 31Z4) above 300 British thermal units per standard cubic foot for a total of nine hours between October 7, 2009 and April 27, 2010; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-02321, GTC, and THSC, §382.085(b), by failing to report all deviations in the semiannual deviation reports; 30 TAC §§115.352(4), 115.783(5), 116.115(c), and 122.143(4), 40 CFR §60.482-6(a)(2) and §63.167(a)(2); NSRP Numbers 18251 and N-011, SC Numbers 3.A., 5, 13.E., and 15.E., FOP Number O-02321, STC 1.A. and 18, and THSC, §382.085(b), by failing to plug or cap an open-ended line which was discovered on October 15, 2010; 30 TAC §§117.335(e), 117.9020(2)(C)(i), and 122.143(4), FOP Number O-02321, STC 1.A. and 21; and THSC, §382.085(b), by failing to conduct a stack test of the second start-up heater (EPN 31H1-2) for the AN3 unit; and 30 TAC §115.781(b)(3) and §122.143(4), FOP Number O-02321,

STC 1.A., and THSC, §382.085(b), by failing to quarterly monitor caps, plugs, and blind flanges in highly-reactive volatile organic compound service; PENALTY: \$113,629; Supplemental Environmental Project Offset amount of \$45,452 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: ATA Land, L.P.; DOCKET NUMBER: 2011-2160-EAQ-E; IDENTIFIER: RN103180675; LOCATION: Bee Cave, Travis County; TYPE OF FACILITY: recreation facility construction site; RULE VIOLATED: 30 TAC §213.23(j) and Edwards Aquifer Contributing Zone Plan (CZP) Number 11-03041101, Standard Condition (SC) Number 11, by failing to maintain permanent best management practices (BMPs) after construction; 30 TAC §213.5(b)(4)(D)(ii)(II) and §213.24(6)(C) and Edwards Aquifer CZP Number 11-03041101, SC Number 11, by failing to submit to the TCEQ a Texas Licensed Professional Engineer Certification, stating that the permanent BMPs were constructed as designed within 30 days of site completion; and 30 TAC §213.23(i) and Edwards Aquifer CZP Number 11-03041101, SC Number 3, by failing to obtain approval of a modification to an Edwards Aquifer CZP prior to constructing the modification; PENALTY: \$4,025; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: ATHENS TWIN VENTURES, INCORPORATED dba Jiffy Junction; DOCKET NUMBER: 2011-2138-PST-E; IDENTIFIER: RN103028502; LOCATION: Athens, Henderson 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 by failing to provide proper release detection for the pressurized piping associated with the USTs; PENALTY: \$5,126; ENFORCEMENT COORDINATOR: Aaron Benmark, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Bobby Patel dba Coastal Cooler; DOCKET NUMBER: 2011-1805-PST-E; IDENTIFIER: RN102238813; LOCATION: Taft, San Patricio 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 by failing to provide release detection for the piping associated with the USTs; PENALTY: \$2,629; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Bridgeport Truck Manufacturing, Incorporated; DOCKET NUMBER: 2011-2000-MLM-E; IDENTIFIER: RN101553170; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: truck body manufacturing plant; RULE VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial waste; and 30 TAC §324.1 and 40 Code of Federal Regulations §279.22(c)(1), by failing to clearly label containers storing used oil; PENALTY: \$5,792; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Carothers, Cody J; DOCKET NUMBER: 2012-0094-WOC-E; IDENTIFIER: RN103321410; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: individ-

ual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: CLEAR LAKE SERVICES, INCORPORATED dba Ryan's Express CL 1; DOCKET NUMBER: 2011-2060-MLM-E; IDENTIFIER: RN101868297; LOCATION: Webster, Harris County; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.20(e)(3)(A), by failing to install a dike or other containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; 30 TAC §337.20(e)(6)(B), by failing to maintain inspection records of the secondary containment system and making them immediately available for inspection upon request by agency personnel; 30 TAC §337.20(c) and 40 Code of Federal Regulations (CFR) §265.173(a), by failing to maintain hazardous waste containers closed except when adding or removing waste; 30 TAC §335.69(a)(3), by failing to ensure that each container used to store hazardous waste is labeled or marked clearly with the words Hazardous Waste; and 30 TAC §335.69(a)(1)(A) and 40 CFR §265.171, by failing to maintain containers managing hazardous waste in good condition; PENALTY: \$9,527; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Donnie R. Brown dba Brown's 66; DOCKET NUMBER: 2011-2111-PST-E; IDENTIFIER: RN101435782; LOCATION: Houston, Harris County; TYPE OF FACILITY: full-service auto station with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,550; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Golden Pass LNG Terminal, LLC; DOCKET NUMBER: 2011-2151-PWS-E; IDENTIFIER: RN104386354; LOCATION: Sabine Pass, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i), by failing to collect routine distribution water samples for coliform analysis for the months of May 2011 - August 2011; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect at least four repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result and by failing to provide public notice to persons served by the facility regarding the failure to collect repeat samples; 30 TAC §290.109(c)(2)(F), by failing to collect five distribution coliform samples the month following a coliform-positive sample result; and 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of October 2010; PENALTY: \$2,182; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Gonzales County Water Supply Corporation; DOCKET NUMBER: 2011-2140-PWS-E; IDENTIFIER: RN101235778; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §§290.110(e)(2) and (5), 290.111(h)(2) and (12), and 290.122(f), by failing to submit Surface Water Monthly Operating Reports (SWMORs) to the executive director by the tenth day of the month following the end of the reporting period and by failing to submit to the executive director a copy of the public notice provided to the persons

served by the facility of the failure to submit SWMORs for the months of September 2010 - August 2011; and 30 TAC §290.109(c)(4)(B) and §290.122(f), by failing to collect one raw groundwater source *escherichia coli* sample from each of the facility's five wells within 24 hours of notification of a distribution total coliform-positive sample and by failing to submit to the executive director a copy of the public notice provided to the persons served by the facility of the failure to collect the raw groundwater source *escherichia coli* samples; PENALTY: \$5,786; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: GULKAS, INCORPORATED dba RNS Express Mart; DOCKET NUMBER: 2011-1799-PST-E; IDENTIFIER: RN101791507; LOCATION: Lake Jackson, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a), (c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system and by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and also by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to test the line leak detectors at least once per year for performance and operational reliability; and also by failing to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §115.226(1) and Texas Health and Safety Code, §382.085(b), by failing to maintain fuel delivery records at the station; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.42(i), by failing to inspect at least once every 60 days, any sumps, manways, overflow containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid; PENALTY: \$8,926; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: GWD OPERATING, LTD. dba Vintage Car Wash; DOCKET NUMBER: 2011-1634-PST-E; IDENTIFIER: RN101546299; LOCATION: Coppell, Dallas County; TYPE OF FACILITY: car wash with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,550; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: JAVERIA ENTERPRISES, INCORPORATED dba Best Food Market; DOCKET NUMBER: 2011-1475-PST-E; IDENTIFIER: RN102446721; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,100; ENFORCEMENT COORDINATOR: Wal-

lace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: K C Utilities, Incorporated; DOCKET NUMBER: 2011-1270-PWS-E; IDENTIFIER: RN101243921; LOCATION: Alvin, 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; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Klaas Talsma dba Talsma Dairy; DOCKET NUMBER: 2011-1984-AGR-E; IDENTIFIER: RN102313384; LOCATION: Hico, Erath County; TYPE OF FACILITY: dairy and animal feeding operation; RULE VIOLATED: TWC, §26.121, 30 TAC §321.31(a), and Texas Pollutant Discharge Elimination System Permit Number WQ0003145000, Permit Authorization and Coverage VI.A, by failing to prevent a discharge or disposal of wastewater from an animal feeding operation into or adjacent to water in the state; PENALTY: \$3,300; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Leander Independent School District; DOCKET NUMBER: 2011-1074-PST-E; IDENTIFIER: RN101492627; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: fleet refueling and maintenance facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(20) COMPANY: Mossburg, Jack; DOCKET NUMBER: 2012-0018-WQ-E; IDENTIFIER: RN104939087; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: recreational vehicle park; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Nico Tyme Water Co-op, Incorporated; DOCKET NUMBER: 2011-2163-PWS-E; IDENTIFIER: RN101215788; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the month of June 2011, and by failing to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample for June 2011; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect raw groundwater source *escherichia coli* samples from all sources within 24 hours of being notified of a distribution total coliform-positive result during the month of June 2011, and by failing to provide public notification of the failure to collect raw groundwater source *escherichia coli* samples for the month of June 2011; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a col-

iform-positive sample result for the month of July 2011; PENALTY: \$1,083; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Pottsboro Independent School District; DOCKET NUMBER: 2011-2364-PST-E; IDENTIFIER: RN101888758; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Racetrac Petroleum, Incorporated dba Race-trac 173; DOCKET NUMBER: 2011-2154-PST-E; IDENTIFIER: RN105889133; LOCATION: Garland, Dallas 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; 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 USTs; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Ricky Bonds Septic Systems & Water Wells, LLC; DOCKET NUMBER: 2011-2065-WR-E; IDENTIFIER: RN105028898; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: septic system and water well company; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water from the site; PENALTY: \$3,350; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Rio Water Supply Corporation; DOCKET NUMBER: 2011-1974-PWS-E; IDENTIFIER: RN101456689; LOCATION: Rio Grande City, Starr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as fire fighting; and 30 TAC §290.46(d)(2)(B), by failing to operate the disinfection equipment to continuously maintain a chloramine residual of at least 0.5 milligrams per liter throughout the distribution system at all times; PENALTY: \$2,810; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: SHREE HARIOM CORPORATION dba Bandera Ice House; DOCKET NUMBER: 2011-1980-PST-E; IDENTIFIER: RN102397072; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and (c)(4)(C) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system and by failing to inspect the cathodic protection system for operability and adequacy of protection at least once every three years; PENALTY: \$4,092; ENFORCEMENT

COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: SINGH AND SUNNY CORPORATION dba Texas Fill Up; DOCKET NUMBER: 2012-0075-PST-E; IDENTIFIER: RN101880326; LOCATION: Athens, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(28) COMPANY: Southern Crushed Concrete, LLC; DOCKET NUMBER: 2012-0017-WQ-E; IDENTIFIER: RN106223977; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: sand and gravel mining; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Taylor Petroleum Companies, Incorporated; DOCKET NUMBER: 2011-1702-PWS-E; IDENTIFIER: RN101885069; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: gas station and convenience store with a public water supply; RULE VIOLATED: 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 notification to the customers of the facility regarding the failure to conduct routine coliform monitoring; PENALTY: \$4,355; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 403-4012; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79101, (806) 353-9251.

(30) COMPANY: UNITED PETROLEUM TRANSPORTS, INCORPORATED; DOCKET NUMBER: 2011-1936-PST-E; IDENTIFIER: RN100700954; LOCATION: Odessa, Ector County; TYPE OF FACILITY: fleet refueling; 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 (2) and TWC, §26.3475(a) and (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 by failing to provide release detection for the pressurized piping associated with the UST; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,359; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-201201276

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2012



Enforcement Orders

A default order was entered regarding Jose Trevino, Docket No. 2010-0950-AIR-E on February 24, 2012 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SLC Construction, LLC, Docket No. 2010-1019-MLM-E on February 24, 2012 assessing \$35,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gerald Fisher dba Turneco Oil and Service, Docket No. 2010-1608-IHW-E on February 24, 2012 assessing \$2,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding the City of Bartlett, Docket No. 2010-1749-PWS-E on February 24, 2012 assessing \$672 in administrative penalties with \$134 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John Duncan dba A Plus Construction and Lawn, Docket No. 2011-0021-AIR-E on February 24, 2012 assessing \$6,147 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HoustonAustin Investments, LLC dba Courtesy Shell 4, Docket No. 2011-0111-PST-E on February 24, 2012 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Paula Roark dba Naconiches Farm, Docket No. 2011-0225-IHW-E on February 24, 2012 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Carlos Reyes dba Chucos Tire Shop and James A. Wilson, Docket No. 2011-0448-PST-E on February 24, 2012 assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newton, Docket No. 2011-0584-MWD-E on February 24, 2012 assessing \$5,370 in administrative penalties with \$1,074 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tex Mix Partners, Ltd., Docket No. 2011-0630-IWD-E on February 24, 2012 assessing \$721 in administrative penalties with \$144 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crosswinds I Partnership, Ltd., Docket No. 2011-0797-EAQ-E on February 24, 2012 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOVA ENTERPRISES INC. dba Stella Link Valero, Docket No. 2011-0818-PST-E on February 24, 2012 assessing \$4,979 in administrative penalties with \$995 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 610 ENTERPRISES INC. dba 610 Valero, Docket No. 2011-0838-PST-E on February 24, 2012 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Schertz, Docket No. 2011-0847-MWD-E on February 24, 2012 assessing \$1,150 in administrative penalties with \$230 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Norit Americas, Inc., Docket No. 2011-0850-AIR-E on February 24, 2012 assessing \$69,650 in administrative penalties with \$13,930 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STELLA LINK BUSINESS, LLC dba Corner Drive In Grocery, Docket No. 2011-0863-PST-E on February 24, 2012 assessing \$2,880 in administrative penalties with \$576 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EOG Resources, Inc., Docket No. 2011-0866-AIR-E on February 24, 2012 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alstom Power Inc., Docket No. 2011-0871-AIR-E on February 24, 2012 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Central Bowie County Water Supply Corporation, Docket No. 2011-0873-PWS-E on February 24, 2012 assessing \$3,634 in administrative penalties with \$726 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vishnu Priya, LLC dba Bruton Road Mobil, Docket No. 2011-0894-PST-E on February 24, 2012 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FGH INSULATION CO., Docket No. 2011-0904-PST-E on February 24, 2012 assessing \$2,361 in administrative penalties with \$472 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NYLA, INC. dba Courtesy Food Mart, Docket No. 2011-0981-PST-E on February 24, 2012 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 2SAM, INCORPORATED dba Hyridge Grocery, Docket No. 2011-0983-PST-E on February 24, 2012 assessing \$2,886 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Izzet Yildirim dba Charles Conoco, Docket No. 2011-1012-PST-E on February 24, 2012 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A&M Silver, Inc. dba Winners Corner 2, Docket No. 2011-1037-PWS-E on February 24, 2012 assessing \$1,516 in administrative penalties with \$303 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James A. Derryberry dba A1 Dirt Co., Docket No. 2011-1039-MLM-E on February 24, 2012 assessing \$3,074 in administrative penalties with \$614 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXCELLENT INC. dba Kwiks Top Grocery, Docket No. 2011-1052-PST-E on February 24, 2012 assessing \$4,700 in administrative penalties with \$940 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILLIAM GROCERY, INC. dba Jiffy Mart 4, Docket No. 2011-1060-PST-E on February 24, 2012 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding KACHMAR ENTERPRISES, INC. dba Snook Lane Citgo, Docket No. 2011-1087-PST-E on February 24, 2012 assessing \$24,065 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Timber Solutions, Inc., Docket No. 2011-1088-MSW-E on February 24, 2012 assessing \$2,096 in administrative penalties with \$419 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KOLDER, INC. dba Numo Manufacturing, Docket No. 2011-1118-IHW-E on February 24, 2012 assessing \$20,940 in administrative penalties with \$4,188 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A C Mobile Inc., Docket No. 2011-1137-PST-E on February 24, 2012 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW MART CORPORATION dba Murphy Food Corner, Docket No. 2011-1139-PST-E on February 24, 2012 assessing \$3,155 in administrative penalties with \$631 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding B. K. TRADING, INC. dba Speedy Stop 9, Docket No. 2011-1169-PST-E on February 24, 2012 assessing \$3,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Buffalo, Docket No. 2011-1183-MWD-E on February 24, 2012 assessing \$2,020 in administrative penalties with \$404 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spring Branch Independent School District, Docket No. 2011-1187-PST-E on February 24, 2012 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHUONG GIA CORPORATION dba 1 Stop, Docket No. 2011-1201-PST-E on February 24, 2012 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Fuechec, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West End Auto-works, Inc., Docket No. 2011-1246-PST-E on February 24, 2012 assessing \$7,833 in administrative penalties with \$1,566 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASMATS, L.L.C. dba CrossTimbers Coastal, Docket No. 2011-1274-PST-E on February 24, 2012 assessing \$2,350 in administrative penalties with \$470 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Walker, Enforcement Coordinator at (512) 239-2596, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John A. Matlock dba Matlocks Country Corner, Docket No. 2011-1309-PST-E on February 24, 2012 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Fuechec, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regal Energy Operating, L.L.C., Docket No. 2011-1378-WR-E on February 24, 2012 assessing \$850 in administrative penalties with \$170 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIVER BEND WATER SERVICES, INC., Docket No. 2011-1409-PWS-E on February 24, 2012 assessing \$422 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAPADIA SADLER DEVELOPMENT, INC. dba Kidd Jones 2, Docket No. 2011-1512-PST-E on February 24, 2012 assessing \$11,208 in administrative penalties with \$2,241 deferred.

Information concerning any aspect of this order may be obtained by contacting Charlie Lockwood, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Palestine, Docket No. 2011-1531-MWD-E on February 24, 2012 assessing \$13,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motorola Northwest Property Owners, Inc., Docket No. 2011-1532-EAQ-E on February 24, 2012 assessing \$16,125 in administrative penalties with \$3,225 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2011-1585-AIR-E on February 24, 2012 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ballinger, Docket No. 2011-1671-PWS-E on February 24, 2012 assessing \$368 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2011-1766-AIR-E on February 24, 2012 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIO GRANDE VALLEY SUGAR GROWERS, INC., Docket No. 2011-1785-AIR-E on February 24, 2012 assessing \$14,900 in administrative penalties with \$2,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2011-2336-AIR-E on February 24, 2012 assessing \$98,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Bergeron Perdue, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201201309

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 7, 2012



Notice of Correction to Agreed Order Number 4

In the February 17, 2012, issue of the *Texas Register* (37 TexReg 967), the Texas Commission on Environmental Quality (commission) published a notice of Agreed Order Number, specifically Item Number 4. The reference to the PENALTY: \$2,500 was submitted in error by the commission and instead should have been submitted as PENALTY: \$2,625.

For questions concerning this error, please contact Phillip Goodwin at (512) 239-0675.

TRD-201201284

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2012



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 **April 16, 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 April 16, 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: 5 Star Diamond, LLC d/b/a Diamond Mart; DOCKET NUMBER: 2011-1242-PST-E; TCEQ ID NUMBER: RN102226693; LOCATION: 3705 South Carrier Parkway, Grand Prairie, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,436; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Adam G. Lozano and Hector C. Ramos; DOCKET NUMBER: 2010-1359-MSW-E; TCEQ ID NUMBER: RN105931448; LOCATION: South Highway 16 and Schuettig Road (CAD Property Identification Number 11790), Poteet, Atascosa County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$15,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: CHEMICAL RESEARCH & LICENSING COMPANY DBA CDTECH; DOCKET NUMBER: 2011-1034-IHW-E; TCEQ ID NUMBER: RN105103246; LOCATION: 10100 Bay Area Boulevard, Pasadena, Harris County; TYPE OF FACILITY: catalytic distillation structure production operation; RULES VIOLATED: 30 TAC §335.1(138)(I) and §335.19(c), 40 Code of Federal Regulations §261.2(f), and the variance granted on July 3, 2007, by failing to provide records demonstrating that catalyst materials at the facility were deactivated in accordance with the standards and criteria contained in the variance; PENALTY: \$4,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Ghotra Ventures, Inc. d/b/a Guilbeau Shell; DOCKET NUMBER: 2010-0056-PST-E; TCEQ ID NUMBER: RN100537141; LOCATION: 9094 Guilbeau Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B) and §334.46(i)(1), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$2,625; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; RE-

GIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Kevma Corporation and Ravindra Bhakta d/b/a Kevma Corporation; DOCKET NUMBER: 2011-0724-MWD-E; TCEQ ID NUMBER: RN101528974; LOCATION: the west side of the right-of-way of United States Highway 59 approximately 2,500 feet south southwest of the intersection of North Belt and United States Highway 59, Harris County; TYPE OF FACILITY: domestic wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$6,360; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Lummus Technology, Inc. dba CDTECH; DOCKET NUMBER: 2011-1033-IHW-E; TCEQ ID NUMBER: RN105103246; LOCATION: 10100 Bay Area Boulevard, Pasadena, Harris County; TYPE OF FACILITY: catalytic distillation structure production operation; RULES VIOLATED: 30 TAC §335.1(138)(I) and §335.19(c), 40 Code of Federal Regulations §261.2(f), and the variance granted on July 3, 2007, by failing to provide records demonstrating that catalyst materials at the facility were deactivated in accordance with the standards and criteria contained in the variance; PENALTY: \$4,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Mark A. Vasquez dba Maverick Cleaners; DOCKET NUMBER: 2010-1973-MLM-E; TCEQ ID NUMBER: RN100618552; LOCATION: 8133 Bandera Road, San Antonio, Bexar County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §335.69(f)(4), and 40 Code of Federal Regulations (CFR) §265.37, and TCEQ AO Docket Number 2008-1198-MLM-E, Ordering Provision Number 2.a., by failing to make emergency response arrangements with local authorities; 30 TAC §335.10(d)(1), and 40 CFR §262.23(a), and TCEQ AO Docket Number 2008-1198-MLM-E, Ordering Provision Number 2.b.ii., by failing to maintain manifests for dry cleaning waste; 30 TAC §335.9(a)(2) and TCEQ AO Docket Number 2008-1198-MLM-E, Ordering Provisions Number 2.b.iii., by failing to submit and provide Annual Waste Summaries; 30 TAC §335.62 and CFR §262.11, by failing to conduct hazardous waste determinations for waste at the facility; and Texas Health and Safety Code, §374.102 and 30 TAC §337.11(e), by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$30,444; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Mike L. Mayfield dba Mayfield Septic Cleaning; DOCKET NUMBER: 2011-1749-SLG-E; TCEQ ID NUMBER: RN106061518; LOCATION: 4913 Alamo Road, Bowie, Montague County; TYPE OF FACILITY: registered sludge transporter business; RULES VIOLATED: TWC, §26.121(a)(2) and 30 TAC §312.143, by failing to deposit septic tank waste at an authorized facility; PENALTY: \$1,238; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Seoung Woo Lee dba Diamond Shamrock; DOCKET NUMBER: 2011-0979-PST-E; TCEQ ID NUMBER: RN102265907; LOCATION: 8600 North MacArthur Boulevard, Irving, Dallas County; TYPE OF FACILITY: underground storage tank (UST)

system and a convenience store with retail sales of gasoline; RULES VIOLATED: 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); PENALTY: \$2,550; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Universal Enterprises, Inc. dba Handi Plus 19; DOCKET NUMBER: 2011-1000-PST-E; TCEQ ID NUMBER: RN101437028; LOCATION: 16006 Beaumont Highway, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$3,098; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: WINDWATER, INC. dba 1 Reveille Food Store; DOCKET NUMBER: 2011-1852-PST-E; TCEQ ID NUMBER: RN101820280; LOCATION: 3418 Reveille Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,550; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201201281

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2012



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; 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 **April 16, 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, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required

to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 16, 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: CJY Investments, L.L.C. d/b/a Beverage Palace; DOCKET NUMBER: 2011-1199-PST-E; TCEQ ID NUMBER: RN102886405; LOCATION: 2750 East President George Bush Highway, Richardson, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every twelve months; 30 TAC §115.246(1), (5) and (7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with State II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §334.10(b) and §334.51(c), by failing to maintain spill and overflow records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.7(d)(3), by failing to notify the agency of the change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overflow containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid or debris; and 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(a) and (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); by failing to provide proper release detection for the piping associated with the UST; by failing to test the line leak detectors at least once per year for performance and operational reliability; by failing to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1 percent of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$16,511; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ecaterina Najm d/b/a Sunmart 352; DOCKET NUMBER: 2011-0598-PST-E; TCEQ ID NUMBER: RN101943140; LOCATION: 3300 Yellowstone Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$3,669; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Robert Keller d/b/a Robert Keller Tire Service; DOCKET NUMBER: 2010-1441-MSW-E; TCEQ ID NUMBER: RN105896237; LOCATION: 905 East Vanderbilt Street, Stamford, Jones County; TYPE OF FACILITY: scrap tire transport service; RULES VIOLATED: 30 TAC §328.57(c)(3), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility; 30 TAC §328.57(c)(2), by failing to maintain records using a manifest system; and 30 TAC §328.56(d)(2) and §328.60(a), by failing to obtain a scrap tire storage facility registration prior to storing more than 500 used or scrap tires on the ground; PENALTY: \$18,401; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: TERRY'S SUPERMARKET #8, INC; DOCKET NUMBER: 2011-0487-PST-E; TCEQ ID NUMBER: RN102713658; LOCATION: 1710 West Irving Boulevard, Irving, Dallas County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(3), by failing to conduct monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II vapor recovery equipment; THSC, §382.085(b) and 30 TAC §115.246(1) and (5), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by agency personnel; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$6,134; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Trevor J. Willhite d/b/a C&C Snack & Gas 2; DOCKET NUMBER: 2011-1397-PST-E; TCEQ ID NUMBER: RN102372224; LOCATION: 209 West Palm Valley Boulevard, Round Rock, Williamson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the UST system; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), 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: \$4,129; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-201201282

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2012



Notice of Opportunity to Comment on Shutdown/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 overfill 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 overfill 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 **April 16, 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 April 16, 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: ANS Fina Business Enterprises Inc d/b/a ANS Fina; DOCKET NUMBER: 2011-1996-PST-E; TCEQ ID NUMBER: RN101569366; LOCATION: 3501 West Walnut Street, Garland, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED:

TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2), by failing to equip all USTs with spill and overfill prevention equipment; 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: \$4,795; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ata Ur Rahman Khawaja d/b/a M & R Food Mkt; DOCKET NUMBER: 2011-1275-PST-E; TCEQ ID NUMBER: RN102783495; LOCATION: 8788 Hammerly Boulevard, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store; 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 every month (not to exceed 35 days between each monitoring); PENALTY: \$6,000; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Thong Van Nguyen d/b/a T & L Conoco; DOCKET NUMBER: 2011-0835-PST-E; TCEQ ID NUMBER: RN102442712; LOCATION: 6509 Brentwood Stair Road, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier, a valid current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §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 a petroleum UST system; TWC, §26.3475(a) and (c)(1), and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$12,081; 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.

(4) COMPANY: TRISTAR CONVENIENCE STORES, INC. d/b/a/ Handi Stop 62; DOCKET NUMBER: 2011-0978-PST-E; TCEQ ID NUMBER: RN102448321; LOCATION: 6275 West Airport Boulevard, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 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); 30 TAC §334.72, by failing to report a suspected release within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$35,979; STAFF ATTORNEY: Jim Sal-

lans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201201283

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2012



Notice of Water Quality Applications

The following notices were issued on February 24, 2012 through March 2, 2012.

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

LUMINANT GENERATION COMPANY LLC, which operates the Eagle Mountain Steam Electric Station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000550000, which authorizes the discharge of once through cooling water and previously monitored effluent (low volume wastewater, metal cleaning waste, and storm water runoff via internal Outfall 101) at a daily average flow not to exceed 432,000,000 gallons per day. The facility is located at 10029 Morris-Dido Newark Road, adjacent to Eagle Mountain Reservoir and approximately ten (10) miles (via Farm-to-Market Road 1220) northwest of the City of Fort Worth, Tarrant County, Texas 76179.

CARGILL MEAT SOLUTIONS CORPORATION which operates the Cargill Meat Solutions, a beef packing plant, and rendering facility, has applied for a renewal of TCEQ Permit No. WQ0001350000, which authorizes the disposal of process wastewater, utility wastewater and domestic wastewater not to exceed a total flow of 71.3 million gallons for any 30-day period from the facility to the playa lake and an application rate not to exceed 2.8 acre-feet per acre per year via irrigation on a combine area of 2,865 acres of various crops; and the disposal of brine and pickling wastewater at a daily average flow not to exceed 21,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility is located immediately south of U.S. Highway 60 and the Santa Fe Railroad, approximately 3.3 miles southwest of the City of Friona, Parmer County, Texas 79035. The disposal areas are located on various tracts of land with approximately 10 miles south of the facility.

NATIONAL OILWELL VARCO LP, which operates the National Oilwell Varco (NOV) Tuboscope West Little York Coating Facility, has applied for a renewal of TPDES Permit No. WQ0002104000, which authorizes the discharge of compressor aftercooler wastewater, compressor condensate, pipe steam cleaning wash water, floor cleaning wastewater, and storm water at a daily average flow of 36,000 gallons per day. The facility is located at 12100 West Little York Road, approximately one mile southwest of the intersection of U.S. Highway 290 and State Route 529 in the City of Houston, Harris County, Texas 77041.

GEORGIA-PACIFIC WOOD PRODUCTS LLC which operates the Cleveland Plywood Mill, which manufactures plywood, dimensional lumber, sawdust, and pine bark, has applied for a renewal of TPDES Permit No. WQ0002196000, which authorizes the discharge of storm

water, utility wastewater, drum debarker bearing water (once-through cooling water), treated cooling tower blowdown, vehicle and equipment wash water, and wet decking water on an intermittent and flow variable basis via Outfall 001, and the disposal of wastewater from the log vat ponds at a daily average flow not to exceed 20,000 gallons per day via irrigation of 227 acres of pine plantation with native vegetation. The draft permit authorizes the discharge of storm water, utility wastewater, drum debarker bearing water (once-through cooling water), treated cooling tower blowdown, vehicle and equipment wash water, and wet decking water on an intermittent and flow variable basis via Outfall 001. The facility is located at 12936 Farm-to-Market Road 787, approximately one mile northwest of Farm-to-Market Road 787, and approximately 10 miles east of the City of Cleveland, Liberty County, Texas 77327.

ESPERANZA WATER SERVICE COMPANY INC which operates Esperanza Water Service, has applied for a major amendment to TCEQ Permit No. WQ0003807000 to authorize an increase the permitted flow from 10,000 gallons per day to 25,000 gallons per day and to add additional storage to handle the increased volume. The current permit authorizes the disposal of reverse osmosis reject water at a daily average flow not to exceed 10,000 gallons per day via evaporation and percolation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located at 38581 Texas Highway 20, on the north side of Texas Highway 20, approximately 4.5 miles southeast of the City of Fort Hancock, Hudspeth County, Texas 79839.

FREESTONE POWER GENERATION LLC AND CALPINE OPERATING SERVICES COMPANY INC which owns and operates Freestone Power Generation Plant, a combined-cycle electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0004298000, which authorizes the discharge of cooling tower blowdown and low volume waste at a daily average flow not to exceed 820,000 gallons per day via Outfall 001. The facility is located on the east side of State Highway 488, approximately 0.9 mile northeast of the intersection of State Highway 488 and County Road 1124, and 12 miles northeast of the City of Fairfield, Freestone County, Texas 75840.

SANDERSON FARMS, INC (Processing Division), which operates Sanderson Farms Waco Processing Plant (a poultry processing operation), has applied for a renewal of TPDES Permit No. WQ0004784000, which authorizes the discharge of treated process wastewater, boiler blowdown, non-contact cooling water, sanitary sewage, truck wash water, ice wastewater and storm water at a daily average flow not to exceed 1,700,000 gallons per day via Outfall 001. The facility is located on the east side of Aviation Parkway, approximately 1,000 feet north of the intersection of Aviation Parkway and U.S. Highway 84 in Waco, McLennan County, Texas.

HAROLD H WALLACE JR. has applied for a new permit, Proposed TCEQ Permit No. WQ0004859000, to authorize the land application of sewage sludge and domestic septage for beneficial use on 620 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge and domestic septage land application site is located approximately 17 miles southeast of George West, approximately two miles east of Interstate Highway 37, 2.3 miles east of Farm-to-Market Road 3024 and approximately four miles east-south-east of Swinney Switch, in Live Oak County, Texas 78368.

CITY OF DALLAS has applied for a renewal of TPDES Permit No. WQ0010060001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 200,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under

the TPDES program. The facility is located at 1020 Sargent Road, in the City of Dallas in Dallas County, Texas 75203.

CITY OF CENTERVILLE has applied for a renewal of TPDES Permit No. WQ00101470001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 124,000 gallons per day. The facility is located at 709 East Saint Mary's, immediately south of State Highway 7 and approximately 1700 feet east of U.S. Highway 75 in the City of Centerville in Leon County, Texas 75833.

CITY OF ALVARADO has applied for a renewal of TPDES Permit No. WQ0010567002, 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 at 130 County Road 404 approximately 700 feet west of Interstate 35 in Johnson County, Texas 76009.

CITY OF DETROIT has applied for a renewal of TPDES Permit No. WQ0010724001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 108,000 gallons per day. The facility is located approximately 1,200 feet south of U.S. Highway 82, approximately one mile southeast of the intersection of U.S. Highway 82 and Farm-to-Market Road 2573 in Red River County, Texas 75436.

WILDWOOD PROPERTY OWNERS ASSOCIATION has applied for a renewal of TPDES Permit No. WQ0011184001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located at the corner of Balsawood and Chestnut Streets in the Community of Wildwood, approximately 0.25 mile south of Lake Kimble and approximately 2.5 miles west of the intersection of U.S. Highways 69 and 287 and Farm-to-Market Road 3063 in Hardin County, Texas 77663.

LAKE CONROE HILLS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011569001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility is located at 1359 B Bunker Hill Drive, near the shore of Lake Conroe at the intersection of Shoreline Drive and Lake Breeze Lane, 0.5 mile south of Farm-to-Market Road 1097 and approximately 5.0 miles west of the City of Willis in Montgomery County, Texas 77318.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 185, has applied for a renewal of TPDES Permit No. WQ0012124001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 675,000 gallons per day. The facility is located at 5300 Addicks-Satsuma Road, approximately 5.1 miles north of Interstate Highway 10 and approximately 1,600 feet east of State Highway 6 in Harris County, Texas 77084.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 34 has applied for a renewal of TPDES Permit No. WQ0012298002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 6925 1/2 Katy-Gaston Road, approximately 0.25 mile north of the intersection of Farm-to-Market Road 1093 and Katy-Gaston Road in Fort Bend County Texas 77494.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 166 has applied for a renewal of TPDES Permit No. WQ0012474001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 625,000 gallons per day. The facility is located at 16300 West Little York Road, approximately 3,000 feet west of the intersection of State Highway 6 and West Little York Road in Harris County, Texas 77084.

CITY OF GOODLOW has applied for a renewal of TPDES Permit No. WQ0012616001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day.

The facility is located approximately two miles south of the intersection of State Highway 31 and State Highway 309 on the west side of State Highway 309 in Navarro County, Texas 75144.

FAIRVIEW GARDENS DEVELOPMENTS LLC has applied for a renewal of TPDES Permit No. WQ0013578001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located at 11800 Charles Road; approximately 1.0 mile west-northwest of the intersection of U.S. Highway 290 and Farm-to-Market Road 529 in Harris County, Texas 77041.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 11 has applied for a renewal of TPDES Permit No. WQ0013689001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located adjacent to the west side of Sam Houston Toll Road and the north side of Harris County Flood Control Ditch E200-00-00, south of West Road and east of Whiteoak Bayou in Harris County, Texas 77040.

GRAND MISSION MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0014231001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 19553 Bellaire Boulevard, approximately 0.9 mile south and 0.5 mile west of the intersection of Farm-to-Market Road 1093 and Harlem Road in Fort Bend County, Texas 77407.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 83 has applied for a renewal of TPDES Permit No. WQ0014482001, 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 4,800 feet west-northwest of the intersection of Northpark Drive and U.S. Highway 59 and approximately 600 feet north of Morton Road in Montgomery County, Texas 77056.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 134A has applied for a major amendment to TPDES Permit No. WQ0014715001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 600,000 gallons per day. The facility is located at 1766 1/2 Sauki Lane, approximately 4,850 feet west of the intersection of Farm-to-Market Road 1464 and Madden Road.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 500 has applied for a renewal of TPDES Permit No. WQ0014740001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 1,700 feet north of West Road and 3,100 feet west of Barker-Cypress Road in northwest Harris County, Texas 77433.

SALADO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0014774001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via non-public access subsurface area drip dispersal system with a minimum area of 80,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at the Salado Independent School District's High School site, southeast of the intersection of Williams Road and Farm-to-Market Road 2484, approximately 850 feet east of Williams Road and approximately 1,300 feet south of Farm-to-Market Road 2484 in Bell County, Texas 76571.

CITY OF CRESSON has applied for a renewal of TPDES Permit No. WQ0014805001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per

day. The facility is located east-southeast of the intersection of U.S. Highway 377 and Old Granbury Road in Hood County, Texas 76035.

EB WINDY HILL LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015011001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located south of the end of Mockingbird Lane and approximately 2 miles east of the intersection of Interstate Highway 35 and County Road 122 (Beebe Road) in Hays County, Texas 78640.

TOWN OF ROUND TOP has applied for a new permit, proposed Permit No. WQ0015025001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 27,000 gallons per day. The facility will be located approximately 1.0 mile northeast of the intersection of Farm-to-Market Road 1457 and State Highway 237, at the dead end of Marcia Lane in Fayette County, Texas 78954.

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.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201201308

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 7, 2012

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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
Bridgeport	West 380 Family Care Facility dba North Texas Community Hospital	L06456	Bridgeport	00	02/22/12
Jewett	NRG Texas Power, L.L.C.	L06457	Jewett	00	02/22/12
San Antonio	South Texas Cardiology Institute	L06454	San Antonio	00	02/14/12
Throughout TX	Austin Bridge and Road, L.P.	L06455	Irving	00	02/15/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Cardiology Center of Amarillo, L.L.P.	L05736	Amarillo	14	02/14/12
Beaumont	Exxonmobil Corporation dba Exxonmobil Chemical Company	L02316	Beaumont	42	02/22/12
Bedford	Texas Health Physicians Group dba Cardiac and Vascular Center of North Texas	L06373	Bedford	02	02/24/12
Bellaire	Texas Nuclear Imaging, Inc. dba Excel Diagnostics Imaging Clinic Medical Center	L05009	Bellaire	38	02/22/12
Borger	Chevron Phillips Chemical Company, L.P.	L05181	Borger	22	02/23/12
Cleveland	Premier Cardiovascular Consultants	L06179	Cleveland	02	02/17/12
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	87	02/15/12
Corpus Christi	Sherwin Alumina, L.P. dba Sherwin Alumina Company	L00200	Corpus Christi	49	02/22/12
Corpus Christi	Citgo Refining and Chemicals Company, L.P.	L00243	Corpus Christi	48	02/21/12
Dallas	Cardinal Health	L02048	Dallas	141	02/15/12
Dallas	Cardinal Health	L05610	Dallas	21	02/17/12
Deer Park	Total Petrochemicals USA, Inc.	L00302	Deer Park	58	02/23/12
Euless	Texas Health Physicians Group dba PET/CT Center of Richardson	L06424	Euless	01	02/23/12
Galena Park	United States Gypsum Company	L03896	Galena Park	12	02/15/12
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	171	02/23/12
Houston	The Methodist Hospital	L00457	Houston	183	02/27/12
Houston	Ben Taub General Hospital	L01303	Houston	72	02/17/12
Houston	Westhollow Technology Center	L02116	Houston	50	02/13/12
Houston	Cardinal Health	L05536	Houston	32	02/15/12
Houston	Cambridge Heart Center, P.A.	L05623	Houston	13	02/17/12
Houston	Methodist Health Centers dba Methodist West Houston Hospital	L06358	Houston	03	02/24/12
Houston	The University of Texas M.D. Anderson Cancer Center	L06366	Houston	01	02/24/12
Houston	Ninyo & Moore, Geotechnical and Environmental Consultants	L06379	Houston	02	02/16/12
Houston	The Methodist Hospital Research Institute	L06383	Houston	02	02/23/12
Lubbock	Radiation Oncology of the South Plains, P.A. dba Lubbock Imaging Center	L05418	Lubbock	15	02/21/12
Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	07	02/15/12
Midland	Casedhole Solutions, Inc.	L06356	Midland	01	02/16/12
Orange	Tin, Inc. dba Temple Inland	L01029	Orange	59	02/21/12
Plano	Physician Reliance Network, Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	20	02/21/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	296	02/14/12
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	136	02/14/12
Sugar Land	US Imaging, Inc. dba Fort Bend Imaging	L04459	Sugar Land	40	02/21/12
Sweeny	Conocophillips Company	L00337	Sweeny	58	02/28/12
Temple	Scott and White Memorial Hospital dba Childrens Hospital - Scott and White Healthcare	L00666	Temple	54	02/13/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	90	02/15/12
Throughout TX	City of Brownwood	L05073	Brownwood	09	02/21/12
Throughout TX	Rone Engineering Services, Ltd.	L02356	Dallas	37	02/15/12
Throughout TX	Mistras Group, Inc.	L06369	Deer Park	04	02/14/12
Throughout TX	Archana USA, Inc.	L05931	El Paso	04	02/22/12
Throughout TX	The Dow Chemical Company	L00451	Freeport	91	02/16/12
Throughout TX	Earthco, L.L.C.	L06213	Harlingen	04	02/22/12
Throughout TX	Oceaneering International, Inc.	L04463	Ingleside	80	02/15/12
Throughout TX	Dialog Wireline Services, L.L.C.	L06104	Kilgore	07	02/15/12
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	95	02/16/12
Throughout TX	Turner Specialty Services, L.L.C.	L05417	Nederland	42	02/21/12
Throughout TX	GCT Inspection, Inc.	L02378	Pasadena	109	02/28/12
Throughout TX	Tracerco	L03096	Pasadena	79	02/15/12
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	115	02/14/12
Throughout TX	Turner Industries Group, L.L.C.	L06235	Pasadena	06	02/28/12
Throughout TX	D & S Engineering Labs, P.L.L.C.	L06353	Sanger	03	02/14/12
Wichita Falls	United Regional Health Care System, Inc.	L00350	Wichita Falls	112	02/28/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	RSI Inspection, L.L.C.	L05624	Abilene	21	02/16/12
Throughout TX	Kiewit Infrastructure South Company	L04569	Fort Worth	26	02/22/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Garland	L3 Communications Corporation	L02155	Garland	34	02/15/12
San Antonio	Texas Cancer Clinic	L05786	San Antonio	18	02/21/12
Throughout TX	BJ Services Company USA	L02684	Tomball	68	02/16/12

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.

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**Texas Department of Insurance, Division of
Workers' Compensation**

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed amendments to §110.1 and §110.101 and proposed new §§110.7, 110.103, and 110.105 in Chapter 110, Required Notices of Coverage, in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1130). The following errors appear in the notice of proposed rulemaking.

On page 1136, the first quotation mark in §110.1(b) is existing language and should not be underlined. The sentence should read as follows:

"As used in this section, "workers' compensation insurance..."

On page 1136, in §110.1(c), the hyphen between the words "Self" and "Insurers" is new language and should be underlined. The sentence should read as follows:

"Certified Self-Insurers are also subject to...."

On page 1139, in new §110.103(b)(2), the phrase "paragraph (1) of this section" is incorrect. The corrected text is as follows:

"...unless this due date falls within the same time period described by paragraph (1) of this subsection...."

On page 1139, in new §110.103(b)(3), the phrase "paragraphs (1) and (2) of this section" is incorrect. The corrected text is as follows:

"The notices required by paragraphs (1) and (2) of this subsection...."

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Texas Lottery Commission

Instant Game Number 1419 "Cash Bonanza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1419 is "CASH BONANZA". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1419 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1419.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MONEYBAG SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1419 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
MONEYBAG SYMBOL	WINALL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1419), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1419-0000001-001.

K. Pack - A pack of "CASH BONANZA" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page, etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH BONANZA" Instant Game No. 1419 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH BONANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE for that number. If a player reveals a "moneybag" play symbol, the player WINS ALL 5 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No identical non-winning prize symbols on a ticket.

C. No identical non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 1 and \$1).

F. The "MONEYBAG" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

H. When the "MONEYBAG" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching to the WINNING NUMBER play symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH BONANZA" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the

claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH BONANZA" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH BONANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASH BONANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "CASH BONANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1419. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1419 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,209,600	8.33
\$2	705,600	14.29
\$4	252,000	40.00
\$5	67,200	150.00
\$10	84,000	120.00
\$20	39,060	258.06
\$50	3,780	2,666.67
\$100	1,470	6,857.14
\$1,000	126	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.27. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1419 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1419, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201201267

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 1, 2012



Instant Game Number 1421 "King's Ransom"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1421 is "KING'S RANSOM". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1421 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1421.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A SPADE SYMBOL, Q SPADE SYMBOL, J SPADE SYMBOL, 10 SPADE SYMBOL, 9 SPADE SYMBOL, 8 SPADE SYMBOL, 7 SPADE SYMBOL, 6 SPADE SYMBOL, 5 SPADE SYMBOL, 4 SPADE SYMBOL, 3 SPADE SYMBOL, 2 SPADE SYMBOL, A CLUB SYMBOL, Q CLUB SYMBOL, J CLUB SYMBOL, 10 CLUB SYMBOL, 9 CLUB SYMBOL, 8 CLUB SYMBOL, 7 CLUB SYMBOL, 6 CLUB SYMBOL, 5 CLUB SYMBOL, 4 CLUB SYMBOL, 3 CLUB SYMBOL, 2 CLUB SYMBOL, DOLLAR BILL SYMBOL, KING SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$50,000. The possible red play symbols are: A HEART SYMBOL, Q HEART SYMBOL, J HEART SYMBOL, 10 HEART SYMBOL, 9 HEART SYMBOL, 8 HEART SYMBOL, 7 HEART SYMBOL, 6 HEART SYMBOL, 5 HEART SYMBOL, 4 HEART SYMBOL, 3 HEART SYMBOL, 2 HEART SYMBOL, A DIAMOND SYMBOL, Q DIAMOND SYMBOL, J DIAMOND SYMBOL, 10 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 3 DIAMOND SYMBOL and 2 DIAMOND SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1421 - 1.2D

PLAY SYMBOL	CAPTION
A SPADE SYMBOL (black)	ACESP
Q SPADE SYMBOL (black)	QUNSP
J SPADE SYMBOL (black)	JCKSP
10 SPADE SYMBOL (black)	TENSP
9 SPADE SYMBOL (black)	NINSP
8 SPADE SYMBOL (black)	EGTSP
7 SPADE SYMBOL (black)	SEVSP
6 SPADE SYMBOL (black)	SIXSP
5 SPADE SYMBOL (black)	FIVSP
4 SPADE SYMBOL (black)	FORSP
3 SPADE SYMBOL (black)	THRSP
2 SPADE SYMBOL (black)	TWOSP
A CLUB SYMBOL (black)	ACECL
Q CLUB SYMBOL (black)	QUNCL
J CLUB SYMBOL (black)	JCKCL
10 CLUB SYMBOL (black)	TENCL
9 CLUB SYMBOL (black)	NINCL
8 CLUB SYMBOL (black)	EGTCL
7 CLUB SYMBOL (black)	SEVCL
6 CLUB SYMBOL (black)	SIXCL
5 CLUB SYMBOL (black)	FIVCL
4 CLUB SYMBOL (black)	FORCL
3 CLUB SYMBOL (black)	THRCL
2 CLUB SYMBOL (black)	TWOCL
DOLLAR BILL SYMBOL (black)	\$BILL
KING SYMBOL (black)	WINALL
A HEART SYMBOL (red)	ACEHT
Q HEART SYMBOL (red)	QUNHT
J HEART SYMBOL (red)	JCKHT
10 HEART SYMBOL (red)	TENHT
9 HEART SYMBOL (red)	NINHT
8 HEART SYMBOL (red)	EGTHT
7 HEART SYMBOL (red)	SEVHT
6 HEART SYMBOL (red)	SIXHT
5 HEART SYMBOL (red)	FIVHT
4 HEART SYMBOL (red)	FORHT
3 HEART SYMBOL (red)	THRHT
2 HEART SYMBOL (red)	TWOHT
A DIAMOND SYMBOL (red)	ACEDM
Q DIAMOND SYMBOL (red)	QUNDM
J DIAMOND SYMBOL (red)	JCKDM
10 DIAMOND SYMBOL (red)	TENDM
9 DIAMOND SYMBOL (red)	NINDM
8 DIAMOND SYMBOL (red)	EGTDM
7 DIAMOND SYMBOL (red)	SEVDM
6 DIAMOND SYMBOL (red)	SIXDM

5 DIAMOND SYMBOL (red)	FIVDM
4 DIAMOND SYMBOL (red)	FORDM
3 DIAMOND SYMBOL (red)	THRDM
2 DIAMOND SYMBOL (red)	TWODM
\$5.00 (black)	FIVE\$
\$10.00 (black)	TEN\$
\$15.00 (black)	FIFTN
\$20.00 (black)	TWENTY
\$25.00 (black)	TWY FIV
\$40.00 (black)	FORTY
\$50.00 (black)	FIFTY
\$100 (black)	ONE HUND
\$500 (black)	FIV HUND
\$1,000 (black)	ONE THOU
\$50,000 (black)	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1421), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1421-0000001-001.

K. Pack - A pack of "KING'S RANSOM" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "KING'S RANSOM" Instant Game No. 1421 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "KING'S RANSOM" Instant Game is determined

once the latex on the ticket is scratched off to expose 45 (forty-five) play symbols. If a player matches any of YOUR CARDS play symbols to any of the WINNING CARDS play symbols, the player wins the PRIZE for that CARD. If a player reveals a "dollar bill" play symbol, the player instantly wins the PRIZE for that symbol. If a player reveals a "KING" play symbol, the player WINS ALL 20 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No adjacent tickets will contain a play symbol of identical rank in the same location in the WINNING CARDS play area regardless of suit.

B. No adjacent tickets will contain a play symbol of identical rank in the same location in the YOUR CARDS play area regardless of suit.

C. No more than 3 non-winning YOUR CARDS play symbols of identical rank on a ticket regardless of suit.

D. No WINNING CARDS play symbols of identical rank on a ticket regardless of suit.

E. No four or more duplicate non-winning prize symbols on a ticket.

F. A non-winning prize symbol will never be the same as a winning prize symbol.

G. The "KING" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

H. When the "KING" (win all) play symbol appears, there will be no occurrence of any YOUR CARDS play symbols matching to any of the WINNING CARDS play symbols.

I. Non-winning YOUR CARDS will not have the same rank (e.g., J and J) as any WINNING CARDS.

J. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "KING'S RANSOM" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "KING'S RANSOM" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "KING'S RANSOM" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "KING'S RANSOM" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "KING'S RANSOM" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a

prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1421. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1421 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	480,000	12.50
\$10	640,000	9.38
\$15	180,000	33.33
\$20	160,000	37.50
\$50	80,000	75.00
\$100	7,500	800.00
\$500	800	7,500.00
\$1,000	150	40,000.00
\$5,000	20	300,000.00
\$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1421 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1421, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201201268
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 1, 2012



Instant Game Number 1426 "Royal Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1426 is "ROYAL RICHES". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1426 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1426.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, CROWN SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1426 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
CROWN SYMBOL	CROWN
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1426), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1426-0000001-001.

K. Pack - A pack of "ROYAL RICHES" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ROYAL RICHES" Instant Game No. 1426 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "ROYAL RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) play symbols. If a player matches any of YOUR NUMBERS play symbols to either of the ROYAL NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "crown" play symbol, the player wins DOUBLE the PRIZE for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork

on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate ROYAL NUMBERS play symbols on a ticket.

D. The "CROWN" (doubler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

E. No more than two (2) identical non-winning prize symbols will appear on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

H. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "ROYAL RICHES" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "ROYAL RICHES" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ROYAL RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "ROYAL RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "ROYAL RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1426. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1426 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	480,000	12.50
\$4	552,000	10.87
\$5	72,000	83.33
\$10	84,000	71.43
\$20	36,000	166.67
\$50	39,950	150.19
\$100	5,550	1,081.08
\$1,000	40	150,000.00
\$20,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1426 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1426, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201201269
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: March 1, 2012



Instant Game Number 1442 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1442 is "LOTERIA® TEXAS". The play style is "row/column".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1442 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1442.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, CELLO SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1442 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
CELLO SYMBOL	CELLO
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$33.00, \$50.00, \$80.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1442), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1442-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1442 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. There will be no duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00, \$20.00, \$30.00, \$33.00, \$50.00, \$80.00, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$33.00, \$50.00, \$80.00, or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim

is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of \$3,000 or \$33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1442. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1442 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	2,040,000	7.35
\$4	480,000	31.25
\$7	420,000	35.71
\$10	270,000	55.56
\$17	240,000	62.50
\$20	240,000	62.50
\$30	25,000	600.00
\$33	12,500	1,200.00
\$50	11,875	1,263.16
\$80	10,000	1,500.00
\$300	7,500	2,000.00
\$3,000	223	67,264.57
\$33,000	30	500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1442 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1442, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201201291
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: March 6, 2012



North Central Texas Council of Governments

Request for Proposals to Conduct a Transit Needs Assessment and Planning Study

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The NCTCOG is seeking a qualified consultant to conduct a transit needs assessment and planning study. Several communities and public transportation providers in the region face continued intense population growth, public transportation funding challenges, and service coordination barriers. The intent of this effort is to identify existing conditions, detail existing needs for public transportation, describe future growth of those needs, and create a realistic menu of transit options that could be implemented in the next three to five years.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, April 13, 2012, to Jessie Huddleston, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals will be available at <http://www.nctcog.org/trans/admin/rfp> by the close of business on Friday, March 16, 2012.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201201306

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 6, 2012

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is soliciting proposals from qualified entities to organize and operate an integrated service delivery system for workforce development programs in the 26 counties of the Texas Panhandle.

Proposing entities will qualify for consideration as prospective contractors by providing evidence that they are legally organized and authorized to do business in the State of Texas and demonstrating adequate financial resources, fiscal integrity, organizational capability and successful experience performing the types of work described herein.

Workforce Development services provided through the service delivery system include, but may not be limited to, those funded and governed by the Workforce Investment Act, Temporary Assistance for Needy Families/CHOICES, Supplemental Nutrition Assistance Program Employment and Training, Wagner Peyser Employment Services and Child Care grants.

The initial term for any award resulting from this solicitation will be October 1, 2012 through September 30, 2013, with the possibility for renewal for up to four additional one-year periods.

The proposal schedule is expected to be as follows:

Release Request for Proposals (RFP) - March 14, 2012

Proposers Conference - April 5, 2012

Deadline for Questions - April 13, 2012

Deadline for Submission - May 18, 2012

Prospective proposers may request a copy of the RFP by sending the contact and organization names and mailing and email addresses to PRPC Workforce Development Division at wdrfpquestions@thep-rpc.org. The RFP may also be obtained in person at PRPC, 415 West Eighth Avenue, Amarillo, Texas 79101 between 8:00 a.m. to 5:00 p.m., Monday through Friday.

TRD-201201270

Leslie Hardin

WFD Coordinator

Panhandle Regional Planning Commission

Filed: March 1, 2012

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Public Utility Commission of Texas

Notice of Workshop and Request for Comment in Project No. 39936

Section 22 of Senate Bill 980, passed during the 82nd Legislature, directed the Public Utility Commission of Texas (commission or PUCT) to initiate one or more proceedings to review and evaluate whether the Texas Universal Service Fund (TUSF or fund) accomplishes its purposes, as prescribed by Utilities Code §56.021, or whether changes are necessary to accomplish those purposes. The commission is also required to provide a copy of its findings to the legislature. To fulfill this mandate, the commission staff (staff) has opened Project No. 39936 - *Report to the Legislature of the Commission's Findings and Orders Regarding its Review and Evaluation of the Texas Universal Service Fund.*

Parties are invited to submit written comments in response to the following questions by filing 16 copies of such comments with the PUCT Central Records no later than 4:00 p.m. on Monday, April 2, 2012.

Please note that staff has omitted questions regarding the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan here; this proceeding will be informed regarding those programs by P.U.C. Project Nos. 39937 and 39938, respectively.

1. PURA §56.025 - Maintenance of Rates and Expansion of the Fund for Certain Companies (P.U.C. Subst. R. §26.406):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding §56.025 mechanisms?

2. Service to Uncertificated Areas (P.U.C. Subst. R. §26.421):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Service to Uncertified Areas?

3. Successor Utilities (PURA §54.302):

a. Is the program appropriate to accomplish its purpose?

b. What (if any) changes are necessary to accomplish that purpose regarding Successor Utilities?

4. Additional Financial Assistance (P.U.C. Subst. R. §26.408):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Additional Financial Assistance?

5. Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas (P.U.C. Subst. R. §26.421):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas?

6. Universal Service Fund Reimbursement for Certain IntraLATA Service (P.U.C. Subst. R. §26.410):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding USF Reimbursement for Certain IntraLATA Service?

7. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (P.U.C. Subst. R. §26.417):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Designation as Eligible Telecommunications Providers to receive Texas Universal Service Funds?

8. Telecommunications Resale Providers to Receive Texas Universal Service Funds for Lifeline Service Funds (P.U.C. Subst. R. §26.419):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Telecommunications Resale Providers to Receive Texas Universal Service Funds for Lifeline Service Funds?

9. Subsequent Petitions for Service in Uncertificated Areas (P.U.C. Subst. R. §26.422):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Subsequent Petitions for Service in Uncertificated Areas?

10. High Cost Universal Service for Uncertificated Areas where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service (P.U.C. Subst. R. §26.423):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Subsequent Petitions for High Cost Universal Service for Uncertificated Areas where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service?

11. Lifeline Service (P.U.C. Subst. R. §26.412):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Lifeline service?

12. Relay Texas (P.U.C. Subst. R. §26.414):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding Relay Texas?

13. Specialized Telecommunications Program (STAP) (P.U.C. Subst. R. §26.415):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding STAP?

14. Audio Newspaper Assistance Program (ANAP) (P.U.C. Subst. R. §26.424):

a. Is the program accomplishing its purpose, as prescribed by Utilities Code §56.021?

b. What (if any) changes are necessary to accomplish that purpose regarding ANAP?

The staff of the Public Utility Commission of Texas (commission) will hold a workshop in this proceeding, seeking input from interested parties regarding whether the various programs supported by the fund are accomplishing their purposes, or recommendations to ensure that these purposes are accomplished, pursuant to PURA §56.021. For this workshop, staff prefers new comments or responses to filed comments rather than a recitation of comments already filed.

The workshop will be held at 1:00 p.m. on Thursday, April 5, 2012, in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas. Staff requests that persons planning to attend the workshop register by phone with David Smithson, Retail Market Analyst, Competitive Markets Division, (512) 936-7156, or by email (david.smithson@puc.state.tx.us) by 4:00 p.m., Monday, April 2, 2012.

Questions concerning this notice or the workshop should be referred to David Smithson, Retail Market Analyst, Competitive Markets Division, (512) 936-7156, (david.smithson@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201201312

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 7, 2012

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Texas Public Finance Authority

Notice of Request for Information

The Texas Public Finance Authority (the Authority) announces its Request for Information (RFI) to create a pool of qualified investment banking firms from which to obtain underwriting services to assist the Authority in its financings for the remainder of the biennium FY 2012-2013, and for the FY 2013-2014 biennium. A copy of the RFI is available on the Authority's website, at www.tpfa.state.tx.us/rfp.aspx and on the Texas Electronic State Business Daily at esbd.cpa.state.tx.us. Interested firms may also contact the agency directly by email at: RFP@tpfa.state.tx.us.

The Board will base its selection on a firm's relevant experience, qualifications, and success in providing the services outlined in the RFI; the financial stability and strength as well as the firm's financial submission; the quality of the information provided regarding the requirements of the RFI; and any other factors relevant to the firm's capacity and ability to meet the Authority's and the State's needs.

Proposals must be submitted by 5:00 p.m., CST, March 20, 2012.

TRD-201201290

Susan K. Durso

Interim Executive Director and General Counsel

Texas Public Finance Authority

Filed: March 5, 2012

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Request for Applications Concerning Texas Credit Enhancement Program

The Texas Public Finance Authority Charter School Finance Corporation (TPFA CSFC) will vote Friday, March 9, 2012, on whether to make applications available for credit enhancement grant awards for eligible Texas open enrollment charter schools on Monday, March 12, 2012. Criteria for eligible entities will be outlined in the application.

Applications will be available in an electronic format to be downloaded from the TPFA CSFC's website: <http://www.tpfa.state.tx.us/csfc/>.

The Texas Credit Enhancement Program (TCEP) received a \$10 million grant from the US Department of Education to establish a credit enhancement program for charter schools facilities funding. TCEP is a consortium formed by the TPFA CSFC, the Texas Charter Schools Association and the Texas Education Agency (TEA). Currently, there is approximately \$880,000 available for credit enhancement grant awards. The grant funds are to be used to establish reserve funds for charter schools that are issuing municipal bonds to finance the acquisition, construction, repair, or renovation of Texas charter school facilities. Refinancing of facilities debt may be included if it falls within federal program guidelines. The debt service reserve funds will be held in the State treasury solely to provide security for repayment of the bonds. The funds will not be provided directly to the approved charter schools for construction.

Prior to submitting an application charter schools should work with their financial advisors, bond counsel and an underwriter to structure their bond issue and prepare preliminary bond documents. These services will not be provided by TCEP.

The TPFA CSFC is a non-profit corporation created by the Board of Directors of the TPFA, a state agency, pursuant to §53.351 of the Texas

Education Code. TPFA provides administrative and staff support for the TPFA CSFC. The TPFA CSFC is the entity responsible for awarding access to TCEP grant funds.

If the Board approves the issuance of a request for application on March 12, 2012, the applications will be due by April 16, 2012, at 5:00 p.m. into the TPFA office at 300 West 15th Street, Suite 411, Austin, Texas, 78701.

Applications will be reviewed by consortium staff and approved by the TPFA CSFC board. Awards will be announced in late May or early June of 2012. Dates are subject to change.

For additional information contact: Susan K. Durso at susan.durso@tpfa.state.tx.us.

TRD-201201289

Susan K. Durso

Interim Executive Director and General Counsel

Texas Public Finance Authority

Filed: March 5, 2012



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)