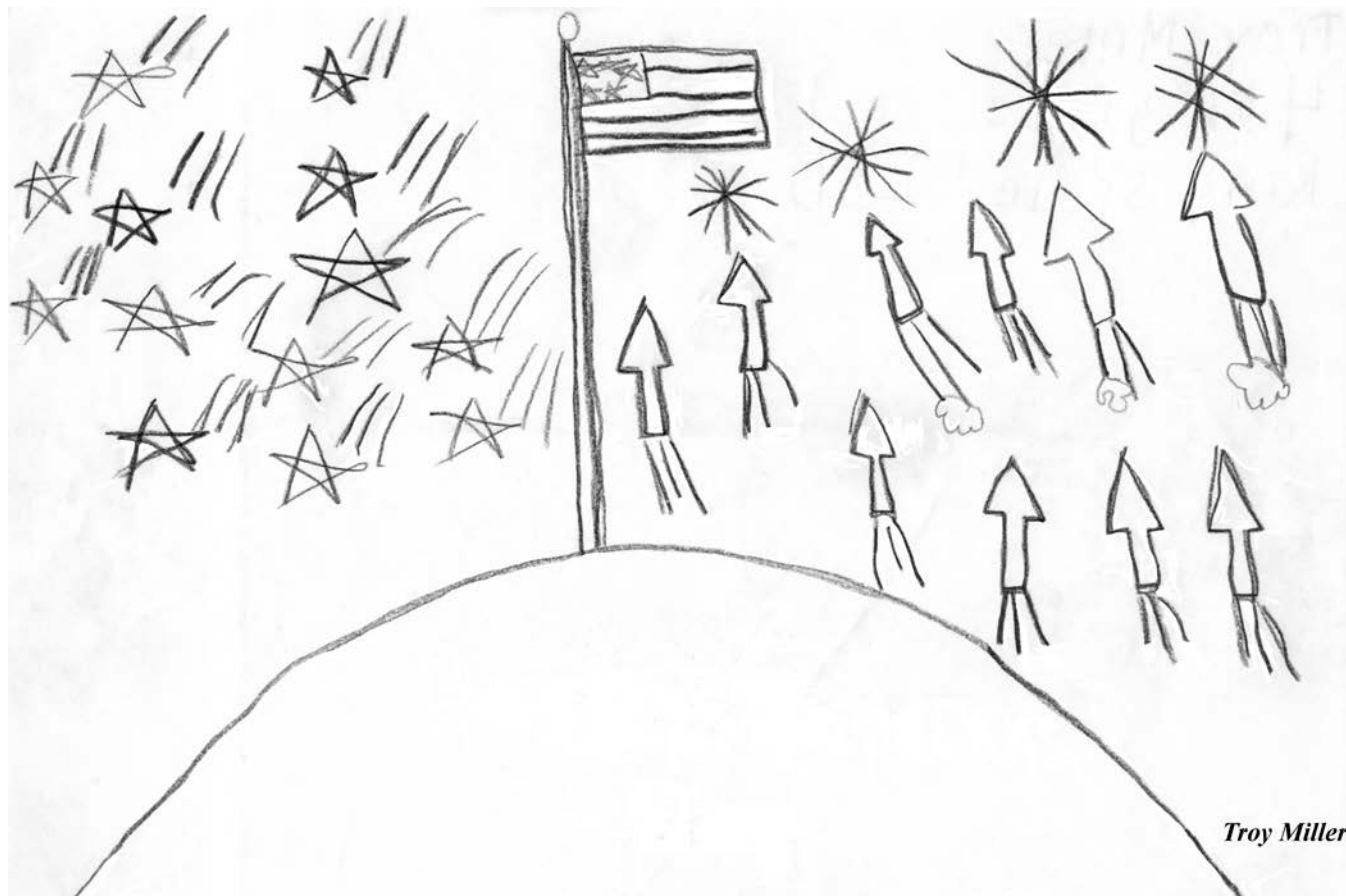

TEXAS REGISTER

Volume 38 Number 28

July 12, 2013

Pages 4445 - 4554



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.

Proclamation 41-3354

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article III, Section 5 and Article IV, Section 8 of the Texas Constitution, do hereby call an extraordinary session of the 83rd Legislature, to convene in the City of Austin, commencing at 2 p.m. on Monday, July 1, 2013, for the following purposes:

To consider legislation relating to the regulation of abortion procedures, providers, and facilities.

To consider legislation relating to the funding of transportation infrastructure projects.

To consider legislation relating to establishing a mandatory sentence of life with parole for a capital felony committed by a 17-year-old offender.

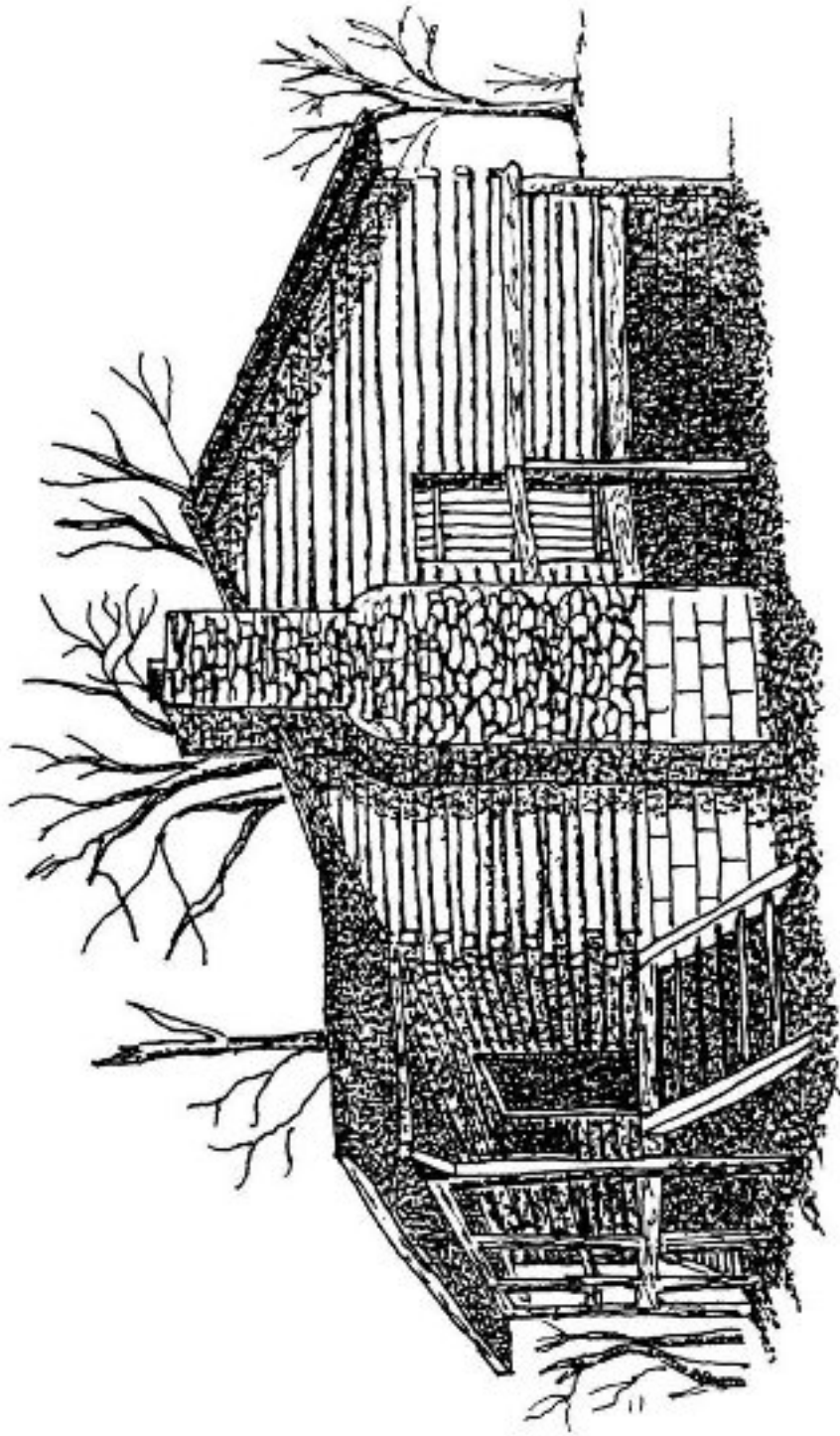
The Secretary of State will take notice of this action and will notify the members of the legislature of my action.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 26th day of June 2013.

Rick Perry, Governor

TRD-201302760





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-1132-GA

Requestor:

The Honorable John J. Carona

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Austin City Council may transfer governance of Austin Energy to a board of directors (RQ-1132-GA)

Briefs requested by July 16, 2013

RQ-1133-GA

Requestor:

The Honorable Delma Rios-Salazar

Kleberg County Attorney

Post Office Box 1411

Kingsville, Texas 78364-1411

Re: Whether the Kleberg County Commissioners Court may create and fund a full-time bailiff position for 105th District Court (RQ-1133-GA)

Briefs requested by July 17, 2013

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

TRD-201302757

Katherine Cary

General Counsel

Office of the Attorney General

Filed: July 1, 2013



Opinions

Opinion No. GA-1009

The Honorable Leticia Van de Putte

Chair, Committee on Veteran Affairs and Military Installations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the 2013 Qualified Allocation Plan adopted by the Texas Department of Housing and Community Affairs complies with Government Code section 2306.6710(b) (RQ-1106-GA)

S U M M A R Y

A court would likely defer to the Texas Department of Housing and Community Affairs' construction of chapter 2306 of the Government Code and uphold Rule 11.9(d)(3) of the 2013 Qualified Allocation Plan.

Opinion No. GA-1010

Ms. Jo Anna Johnson

San Augustine County Auditor

100 West Columbia Street

San Augustine, Texas 75972

Re: Whether a commissioners court may enter into an agreement with a third party to fund road construction (RQ-1107-GA)

S U M M A R Y

A county commissioner, acting alone, may not enter into an agreement with a private entity to fund the repair of county roads.

Section 81.032 of the Local Government Code gives a commissioners court discretion to accept donations of money with lawful, reasonable conditions attached when doing so would further the county's road-building and maintenance duties.

Opinion No. GA-1011

The Honorable Glenn Hegar

Chair

Committee on Nominations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a water control and improvement district may adopt and enforce rules regarding illegal dumping and weed control (RQ-1109-GA)

S U M M A R Y

A water control and improvement district has implied authority to adopt an ordinance to control weeds or regulate illegal dumping within its jurisdiction only if the ordinance is reasonable and is a practical means to accomplish a district purpose, such as the protection of water purity.

The Water Code expressly authorizes a water control and improvement district to enforce state offenses prohibiting illegal dumping.

Opinion No. GA-1012

The Honorable John Smithee
Chair, Committee on Insurance
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether the State of Texas has a legal obligation to pay unfunded losses that exceed the Texas Windstorm Insurance Association's ability to pay (RQ-1112-GA)

S U M M A R Y

The Legislature has chosen not to obligate the State to pay unfunded losses that the Texas Windstorm Insurance Association is unable to pay.

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

TRD-201302803
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 3, 2013



EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

Pursuant to Parks and Wildlife Code, §12.027, the Texas Parks and Wildlife Department adopts on an emergency basis an amendment to §57.972, concerning General Rules. The emergency action adds the West Fork of the Trinity River above the Lake Worth Dam, including Lakes Bridgeport, Eagle Mountain, and Worth, to the list of water bodies under special regulations intended to control the spread of zebra mussels (*Dreissena polymorpha*).

The department has implemented special regulations to control the spread of zebra mussels from the Red River to adjacent water bodies, including Lake Texoma, Lake Lavon, and parts of the Elm Fork of the Trinity River, including Lakes Lewisville and Ray Roberts.

Under ordinary circumstances, the department would consider any person in possession of zebra mussels (including their microscopic larval stage, called veligers) to be in violation of Chapter 57, Subchapter A, which prohibits the possession of exotic aquatic shellfish, including zebra mussels. The special regulation provides that the department will not consider a person in possession of veligers to be in violation of the exotic species rules, provided all live wells, bilges, and other receptacles or systems capable of retaining or holding water as a consequence of being immersed in a water body have been completely drained prior to the use of a public roadway. The rule also provides that a person traveling on a public roadway via the most direct route to another access point located on the same body of water would not be required to drain or empty water. The emergency action would extend the applicability of the current regulation to all impounded and tributary waters of the West Fork of the Trinity River above the Lake Worth dam, including Lakes Worth, Eagle Mountain, and Bridgeport. Zebra mussel veligers were confirmed in Lake Bridgeport on June 17, 2013. Lakes Eagle Mountain and Worth are downstream of Bridgeport on the West Fork of the Trinity River.

The zebra mussel is a small, non-native mussel originally found in Eurasia. It has spread throughout Europe, where it is consid-

ered to be a major environmental and industrial menace. The animal appeared in North America in the late 1980s and within ten years had colonized in all five Great Lakes and the Mississippi, Tennessee, Hudson, and Ohio river basins. Since then, they have spread to additional lakes and river systems.

Zebra mussels live and feed in many different aquatic habitats, breed prolifically, and cannot be controlled by natural predators. Adult zebra mussels colonize all types of living and non-living surfaces including boats, water-intake pipes, buoys, docks, piers, plants, and slow moving animals such as native clams, crayfish, and turtles. The U.S. Fish and Wildlife Service has estimated the potential economic impact of zebra mussels to be in the billions of dollars.

Zebra mussels affect natural ecosystems both directly and indirectly. The greatest direct impact relates to the mussels' feeding behavior. Zebra mussels are filter feeders and process up to one liter of water per day/mussel. During this process, every particle in the water column is removed and either eaten by the mussels or coated in mucus and ejected. Unfortunately, the material removed from the water consists of other live animals and algae that supply food for larval fish and other invertebrates. In response to this changing food supply, indigenous populations of some animals decline and food webs are disturbed or eliminated. Once zebra mussels become established in a water body, they are impossible to eradicate with the technology available today.

What makes zebra mussels particularly difficult to control is that young zebra mussels are so small that they spread easily by water currents and can drift for miles before settling. After settling, the mussels attach to hard objects and remain stationary as they grow. They often attach to objects involved in human activities, such as boats and boat trailers, and are inadvertently moved from one water body to another by people. Any water collected from water bodies where zebra mussels are present could contain veligers; thus, water transported from water bodies with known zebra mussel populations is a vector for the spread of zebra mussels.

For these reasons, the Executive Director of the Texas Parks and Wildlife Department finds that zebra mussels present an immediate danger to species of wildlife regulated by the department (specifically, all indigenous aquatic species whose food supply and/or habitat quality could be altered by zebra mussels, which include game and nongame fish, nongame aquatic wildlife such as turtles, and mussels). The need to prevent the spread of zebra mussels from West Fork of the Trinity River to additional impoundments and drainages creates an imperative necessity to engage in emergency rulemaking. The Executive Director also finds that due to the potential for the rapid spread of zebra mussels, it is necessary to adopt the rule with fewer than 30 days of notice. As a result, the emergency rule will take effect immediately.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which provides that if the commission or the executive director finds that there is an immediate danger to a species authorized to be regulated by the department, the commission or the executive director may adopt emergency rules as provided by Government Code, §2001.034. This rule will continue for no more than 120 days from the date this notice is filed with the *Texas Register*. It is the intent of the department to also propose a non-emergency rule addressing the subject matter of this rule, pursuant to the provisions of Chapter 2001, that, if adopted, would go into effect before the expiration of the emergency rule.

§57.972. *General Rules.*

(a) - (j) (No change.)

(k) A person who leaves a water body listed in this subsection while in possession of a harmful or potentially harmful species listed in §57.111 of this title (relating to Definitions) that is invisible to the unaided human eye is not in violation of §57.112 of this title (relating to General Rules), provided that:

(1) all live wells, bilges, and other similar receptacles and systems that are capable of retaining or holding water as a consequence of being immersed in a water body have been drained prior to the use of a public roadway; or

(2) the person is travelling on a public roadway via the most direct route to another access point located on the same body of water.

(3) This subsection applies to the following bodies of water:

(A) the Red River from the I-44 bridge in Wichita County to the Texas/Arkansas border, including the Texas waters of Lake Texoma;

(B) Lake Lavon; ~~and~~

(C) all impounded and tributary waters of the Elm Fork of the Trinity River above the Lewisville Dam, including Lake Lewisville and Lake Ray Roberts; ~~and~~[-]

(D) all impounded and tributary waters of the West Fork of the Trinity River above Lake Worth dam, including Lakes Worth, Eagle Mountain, and Bridgeport.

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

Filed with the Office of the Secretary of State on June 27, 2013.

TRD-201302718

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: June 27, 2013

Expiration date: October 24, 2013

For further information, please call: (512) 389-4775



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.206

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

The Texas Department of Agriculture (the department) proposes the repeal of §1.206, concerning the Oyster Advisory Committee. The repeal is proposed to implement changes made to Texas Agriculture Code, Chapter 47, by House Bill 1903, 83rd Legislature, 2013, which abolish the department's oyster promotion program and the Oyster Advisory Committee. The repeal of §1.206 eliminates the Oyster Advisory Committee from the department's rules.

Bryan Daniel, chief administrator for trade and business development, has determined that for the first five years the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Daniel also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposed repeal will be to make the department's advisory committee rules consistent with existing law. For the first five-year period the repeal is in effect, there will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the repeal as proposed.

Comments on the repeal may be submitted to Bryan Daniel, Chief Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal of §1.206 is proposed under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency; and §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken ef-

fect; and Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

The codes affected by the proposal are the Texas Government Code, Chapter 2110 and the Texas Agriculture Code, Chapter 12.

§1.206. *Oyster Advisory Committee.*

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 June 28, 2013.

TRD-201302740

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 11, 2013

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



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §§121.1 - 121.14

The Office of the Governor, Texas Film Commission (Commission) proposes amendments to Chapter 121, §§121.1 - 121.12 and §121.14; and new §121.13, concerning the Texas Moving Image Industry Incentive Program.

The proposed amendment to §121.1 removes details of the program that will expire on August 31, 2013; removes percentage caps on expended amounts by industry segment due to expiration of rider on August 31, 2013; removes details of program referenced elsewhere in the chapter; and makes language and punctuation clarifications.

The proposed amendment to §121.2 adds defined terms "Texas Heritage Project" and "Visual Effects Project," which is newly referenced elsewhere in the chapter; removes the defined terms "Texas Spend Option" and "Texas Wage Option," which are no longer referenced elsewhere in the chapter; and makes language and punctuation clarifications to the section's existing defined terms.

The proposed amendment to §121.3 adds Visual Effects Projects to program eligibility due to increased industry utilization and favorable economic impact and makes language and punctuation clarifications.

The proposed amendment to §121.4 makes language and punctuation clarifications.

The proposed amendment to §121.5 adds Visual Effects Projects to program eligibility due to introduction of newly defined terms in §121.2 and makes clarifying language and punctuation refinements.

The proposed amendment to §121.6 lowers incentive rate spend threshold to \$3.5 million dollars in light of lower industry budget standards; adds Visual Effects Projects to grant calculations; increases the cash grant percentage available to Feature Films, Television Programs, Visual Effects Projects and Digital Interactive Media Productions that spend at least \$3.5 million in Texas, in light of their favorable economic impact; increases percentage rates to Commercials, Reality Television Projects, Educational or Instructional Videos and Visual Effects Projects that spend at least \$1 million in Texas; and eliminates Texas Spend and Texas Wages Options to simplify the program.

The proposed amendment to §121.7 eliminates references to Texas Wages Options; identifies an effective date and publishing schedule for updates to Economically Distressed and Underutilized Areas maps used to determine grant rates; and clarifies existing language and calculations.

The proposed amendment to §121.8 increases the time window during which program applications may be accepted to provide earlier potential eligibility for projects; changes the deadline by which program applications must be submitted to provide greater administrative review; adds Visual Effects Projects to program eligibility; and makes language clarifications.

The proposed amendment to §121.9 clarifies the deadline by which incomplete program applications must be remedied; clarifies the finality of Commission decisions regarding applications; clarifies the procedures by which applicant may account for unbudgeted increases in spending; adds alternate procedures for verifying residency of production personnel; permits the Commission to require the applicant to include in a project the Commission logo for marketing purposes; removes references to Texas Spend and Texas Wages Options; and makes language clarifications.

The proposed amendment to §121.10 enumerates an additional condition which may result in application disqualification and makes language and punctuation clarifications.

The proposed amendment to §121.11 clarifies the Commission's procedures for verifying Texas expenditures; removes references to the Texas Wage Option; and makes language and punctuation clarifications.

The proposed amendment to §121.12 corrects a typographical error.

Proposed new §121.13 defines the criteria by which the Commission may designate a Texas Heritage Project to receive additional funding and establishes discretionary nature of and financial limits to that additional funding.

The proposed amendment to §121.14 clarifies the conditions which may result in application revocation and clarifies the Commission's authority to seek recapture of paid-out incentives.

Heather Page, Director of the Commission, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the proposed rules. No cost to either government or the public will result from the proposed rules. There will be no impact on small businesses or microbusinesses.

Ms. Page has also determined that for the first five-year period that the proposed rules are in effect the public benefit anticipated as a result of the proposed rules is a clearer understanding of the program's scope and participation in the program. No economic costs are anticipated to persons who are required to comply with the proposed rules.

Written comments on the proposed rules may be hand-delivered to Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701; mailed to P.O. Box 12428, Austin, Texas 78711-2428; or faxed to (512) 463-1932 and should be addressed to the attention of David Zimmerman, Assistant General Counsel. Comments must be received within 30 days of publication of the proposal in the *Texas Register*.

The amendments and new rule are proposed pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§121.1. Background and Purpose.

(a) Background.

(1) The Texas Moving Image Industry Incentive Program administered by the Texas Film Commission (Commission) offers grants based upon eligible expenditures within the state by the Applicant, subject[: Subject] to this chapter [subchapter] and Chapter 485 of the Texas Government Code.[:]

~~[(A) Feature Films and Television Programs that choose the Texas Spend Option are eligible to receive grants of up to 15% of total eligible in-state spending;]~~

~~[(B) Feature Films and Television Programs that choose the Texas Wage Option are eligible to receive grants of up to 25% of eligible Wages paid to Texas Residents;]~~

~~[(C) Digital Interactive Media Productions are eligible to receive grants of up to 15% of eligible in-state spending paid to Texas Residents; and]~~

~~[(D) Commercials, Educational or Instructional Videos and Reality Television Projects are eligible to receive grants equal to 5% of total eligible in-state spending.]~~

(2) Grants are available upon submission of all required documentation by the Applicant to the [Texas Film] Commission (including submission of the CPA Audit Opinion to the State of Texas, if required by this chapter), initial verification by the [Texas Film] Commission [Incentive staff] and a compliance review [audit] by the Office of the Governor's Compliance and Oversight Division. These grants are in addition to the Sales Tax Exemptions described in Texas Tax Code, §151.318 and §151.3185 and the Texas Comptroller of Public Accounts Administrative Rule, 34 TAC §3.300.

~~[(3) The State of Texas has allocated \$15,000,000 for fiscal year 2012 (September 1, 2011 to August 31, 2012) and \$15,000,000 for fiscal year 2013 (September 1, 2012 to August 31, 2013) for the Texas~~

Moving Image Industry Incentive Program. Applicants will not be eligible to receive funding until after September 1, 2011. This chapter shall apply to grants under the Texas Moving Image Industry Incentive Program from funds allocated to the program by the State of Texas for fiscal year 2012 (September 1, 2011 to August 31, 2012) and fiscal year 2013 (September 1, 2012 to August 31, 2013).]

{(4) Amounts expended in each segment of the Texas Moving Image Industry Incentive Program, which segments include Television Programs (including solely for this purpose Reality Television Projects), Feature Films, Digital Interactive Media Productions, and Commercials, Educational and Instructional Videos, shall not exceed 40 percent of funds allocated to the program by the State of Texas for combined fiscal years 2012 (September 1, 2011 to August 31, 2012) and 2013 (September 1, 2012 to August 31, 2013).]

(b) Purpose.

(1) The Texas Moving Image Industry Incentive Program was implemented to increase employment opportunities for Texas industry professionals, tourism and to boost economic activity in Texas cities and the overall Texas economy. Rather than Texas being an exporter of talent, Texas can now attract a wide range of projects from traditional film and commercial productions to the technology driven visual effects, animation productions and video games [Digital Interactive Media Productions].

(2) The Texas Moving Image Industry Incentive Program allows for growth of the indigenous segments of production. It is an important goal of this program to have Texas' talented workforce stay in Texas and realize real professional growth in the industry. The program increases the value of the Texas workforce and the viability of the small businesses that rely on production activity, increasing Texas' capacity to take on more production activity and increasing Texas competitive edge.

(3) The Texas Moving Image Industry Incentive Program is not intended for productions that are permanently located in the State of Texas including, but not limited to, news productions, sports productions and religious service productions.

§121.2. Definitions.

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

(1) Applicant--

(A) For Feature Films, Television Programs, Visual Effects Projects for Feature Films or Television Programs, Reality Television Projects or Educational or Instructional Videos, either the Production Company producing the project or the owner of the copyright.

(B) For Commercials or Visual Effects Projects for Commercials, [eommercial] the Production Company, advertising agency, or client; provided, however, that if an advertising agency or client applies as the Applicant, but a Production Company expends the funds in the state in connection with a project, a chain of downstream payment from the Applicant to the Production Company actually expending the funds must be evidenced in connection with the submission of the Expended Budget.

(C) For Digital Interactive Media Productions, the game developer or game publisher.

(2) Business Day [day]--A day other than Saturday, Sunday or a legal Federal holiday.

(3) CPA Audit Opinion--An outside examination report and audit opinion letter concerning an Applicant's Expended Budget, conducted pursuant to §121.15 of this chapter.

(4) Cast--Actors paid by the Applicant to perform roles in Texas, including, but not limited to, featured actors, extras, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis, but excluding talk show guests, game or contest show contestants, Reality Series participants, documentary subjects or interviewees, musicians performing as part of a music performance production, and litigants and witnesses in court room reality programs.

(5) Commercial--Any [A commercial is defined as any] live-action or animated production; that is an individual Commercial [eommercial], more than one Commercial [eommercial] created in a contiguous production period for the same client or[,] music video or infomercial[;] that is made for the purpose of entertaining or promoting a product, service, or idea[;] and [that] is produced for distribution via broadcast, cable or any digital format, including, but not limited to, cable, satellite, Internet, or mobile electronic device.

(6) Crew--Workers paid by the Applicant to perform work in Texas that is directly contracted and credited for a specific position, but excluding musicians performing as part of a music performance production. An individual may work in more than one position on a production. Executive Producers and/or permanent salaried employees of an Applicant for a Commercial project [who are] listed on call sheets [Call Sheets] or production reports [Production Reports], but [who are] not paid Wages and [who] do not perform services on the project other than producing services, shall not be counted in Crew calculations for Texas Residency purposes. Vendors serving a traditional crew function and providing personal services, but [who are] paid as independent contractors rather than through payroll, will be counted in Texas Residency Crew calculations and should provide a Declaration of Texas Residency Form.

(7) Declaration of Texas Residency Form--A document promulgated by the Texas Film Commission (Commission) to be utilized by Applicants in order to prove the residency status of each Texas Resident Crew or Cast member.

(8) Digital Interactive Media Production--Software that provides a user or users with a game to play for the purpose of entertainment or education, including for military or medical simulation training, and which is created for a game console, personal computer, handheld console, mobile electronic machine or an electronic device used by a business or consumer solely for bona fide amusement purposes that rewards the player exclusively with non-cash merchandise prizes or a representation of value redeemable for those items, as outlined in Texas Penal Code, §47.01.

(9) Educational or Instructional Video--Any individual [An Educational or Instructional Video is defined as any] live action or animated production or a contiguous series of more than one production created for the same client[;] that is an Educational or Instructional Video or more than one Educational or Instructional Video created in a contiguous production period for the same client; and that is] produced for exhibition in an educational or instructional setting.

(10) Episodic Television Series--A Television Program consisting of multiple episodes of a single season.

(11) Expended Budget--The final verifying documentation submitted by an Applicant to the [Texas Film] Commission at the completion of a project that shows the total eligible in-state spending and includes all documentation considered by the [Texas Film] Commission to be necessary to show compliance with the requirements of the Texas Moving Image Industry Incentive Program.

(12) Feature Film--Any [A Feature Film is defined as any] live-action or animated for-profit production, narrative or documentary

that is produced for distribution in theaters or via any digital format, including, but not limited to, DVD, Internet, or mobile electronic device.

(13) Filming Day--A day of Production as defined in paragraph (18) of this section. For purposes of calculating 60% of Filming Days for purposes of §121.3 of this chapter (but not for purposes of calculating 25% of Filming Days for purposes of §121.7 of this chapter), a "day" may include not only a traditional "day" of Production, but also a concurrent "day" of Production conducted by a second unit [~~Seeoend Unit~~], so long as:

(A) Such second unit, [~~Seeoend Unit~~] is not a splinter unit [~~Splinter Unit~~], but is utilized for a bona fide, production-related purpose and would be recognized by the Directors Guild of America as a second unit [~~Seeoend Unit~~]; and

(B) A call sheet, [~~Call Sheet~~] and production report, [~~Production Report~~] for such "day" is circulated and executed in connection with the activities of such second unit [~~Seeoend Unit~~]. Any such bona fide, second unit [~~Seeoend Unit~~] "day" shall be added to both the numerator of Texas days and the denominator of total days for purposes of calculating 60% of Filming Days for purposes of §121.3 of this chapter.

(14) Physical Production--The period encompassing Pre-Production, Production, and Postproduction.

(15) Postproduction--The period of Physical Production that occurs after the end of Production, as defined in paragraph (18) of this section; including but not limited to, editing, music, sound, visual effects and animation.

(16) Pre-Production--The period of Physical Production that occurs before the start of Production as defined in paragraph (18) of this section.

(17) Principal Start Date--

(A) For a live action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video or Commercial project, this is the first day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project, this is the first day of Production.

(18) Production--

(A) For a live action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video or Commercial project, this is the period of Physical Production between the first and last days of principal photography, inclusive.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project, this is the period of Physical Production between the end of Pre-Production and the completion of the project.

(19) Production Company--A film production company, television production company, Digital Interactive Media Production developer, commercial production company, visual effects company, [~~or~~] animation production company or post-production company.

(20) Qualifying Application--A Qualifying Application has the meaning provided in §121.8(a)(1) of this chapter.

(21) Reality Series--A Reality Television Project consisting of multiple episodes of a single season.

(22) Reality Television Project--Any [~~A Reality Television Project is any~~] live action, for-profit production based upon unscripted content, [~~(including, but not limited to, a Reality Series, [reality series;] a contest or game show[;] (to include individual episodes),[;]~~

or a talk show[;] (to include individual episodes) that is produced for distribution via broadcast, cable or any digital format, including, but not limited to, satellite, Internet and mobile electronic device.

(23) Television Program--Any [~~A Television Program is defined as any~~] live-action or animated for-profit production, narrative or documentary, [~~(including, but not limited to, an Episodic Television Series,[;] a miniseries,[;] a television movie,[;] a television pilot,[;] a television episode,[;] an interstitial Television Program,[;] or a musical performance [that is] more than 30 minutes in length[;]) that is produced for distribution via broadcast, cable or any digital format, including, but not limited to, satellite, Internet and mobile electronic device (including a short episode or series of episodes, either narrative or documentary, that is distributed initially as an Internet download or stream).~~

(24) Texas Heritage Project--A Feature Film or Television Program (excluding a Reality Television Project), that promotes or documents Texas' diverse cultural, historical, natural or man-made resources as determined in accordance with §121.13 of this chapter.

(25) [(24)] Texas Resident--An individual who is a permanent resident of Texas for at least 120 days prior to the Principal Start Date of the project and who has completed a Declaration of Texas Residency Form.

[(25)] Texas Spend Option--Feature Film and Television Program Applicants may choose a total spending option that will take into account all eligible in-state spending (including eligible Wages paid to Texas Residents) in their application pursuant to §121.8 of this chapter to preliminarily determine their grant amount.]

[(26)] Texas Wage Option--Feature Film and Television Program Applicants may choose a Wages only option that will only take into account eligible Wages paid to Texas Residents in their application pursuant to §121.8 hereof to preliminarily determine their grant amount.]

(26) [(27)] Underutilized and Economically Distressed Area--

(A) Underutilized Area--An area of the state that receives less than 15% [~~percent~~] of the total film and television production in the state during a fiscal year as determined by the [~~Texas Film~~] Commission. Areas determined by the [~~Texas Film~~] Commission to receive in excess of 15% [~~percent~~] of the total film and television production in the state will be deemed to include the area within a thirty mile radius from that area's largest municipality's city hall.

(B) Economically Distressed Area--An area within the above-determined thirty mile radius where the median household income does not exceed 75% [~~percent~~] of the median household income as determined by the Texas State Data Center, University of Texas San Antonio.

(27) Visual Effects Project--A self-contained production whereby computer generated images are created or manipulated to integrate with live-action footage of a Feature Film, Television Program, Educational or Instructional Video, or Commercial.

(28) Wages--Compensation paid to an individual for work performed. Payment methods may include, but are not limited to, direct payments, payments through an agent or agency, payments through a loan-out company or payments through a payroll service. Wages may include, but are not limited to, gross wages, per diems (if signed for by the recipient), employer paid Social Security (Old Age, Survivors, and Disability Insurance (OASDI)) payments, employer paid Medicare (MEDI) payments, employer paid Federal Unemployment Insurance (FUI) payments, employer paid Texas State Unemployment Insurance

(SUI) payments, employer paid pension, health and welfare [~~Pension, Health and Welfare~~] payments and employer paid vacation [~~Vacation~~] and holiday pay [~~Holiday payments~~]. Only the first \$1,000,000 in aggregate wages and/or compensation per person will constitute eligible Wage expenditures.

§121.3. *Eligible Projects.*

(a) A project may be eligible for a grant under the Texas Moving Image Industry Incentive Program if it meets the stated minimum requirements listed in subsections (b) - (h) [~~(g)~~] of this section, is appropriate in content and represents a potential economic impact in Texas, as assessed in §121.9(c)(3) of this chapter, that is sufficient to justify acceptance in the program.

(b) Feature Films.

(1) Feature Film Applicants must spend a minimum of \$250,000 in in-state spending.

(2) 60% of the Filming Days must be completed in Texas.

(3) 70% of the paid Crew and 70% of the paid Cast, [~~(including extras,)]~~ must be Texas Residents unless it is determined and certified by the Texas Film Commission (Commission) in writing that a sufficient number of qualified Crew and Cast, [~~(including extras,)]~~ are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(4) Animated or documentary Feature Films must have 70% of the combined total of paid Crew and paid Cast, including extras, be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(c) Television Programs.

(1) Television Program Applicants must spend a minimum of \$250,000 in in-state spending.

(2) 60% of the Filming Days must be completed in Texas.

(3) 70% of the paid Crew and 70% of the paid Cast, including extras, must be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that a sufficient number of qualified Crew and Cast, [~~(including extras,)]~~ are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(4) Animated or documentary Television Programs must have 70% of the combined total of paid Crew and paid Cast, including extras, be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(d) Reality Television Projects.

(1) Reality Television Project Applicants must spend a minimum of \$250,000 in in-state spending.

(2) 60% of the Filming Days must be completed in Texas.

(3) 70% of the combined total of paid Crew and paid Cast, including extras, must be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that a sufficient number of qualified Crew and Cast, [~~(including extras,)]~~ are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(e) Commercials.

(1) Commercial Applicants must spend a minimum of \$100,000 in in-state spending.

(2) 60% of the Filming Days must be completed in Texas.

(3) 70% of the combined total of paid Crew and paid Cast, including extras, which are paid by the Applicant, must be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that a sufficient number of qualified Crew and Cast, [~~(including extras,)]~~ are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(f) Digital Interactive Media Productions.

(1) Digital Interactive Media Production Applicants must spend a minimum of \$100,000 in in-state spending.

(2) 60% of the Filming Days must be completed in Texas.

(3) 70% of the combined total of paid Crew and paid Cast which are paid by the Applicant must be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(g) Educational or Instructional Videos.

(1) Educational or Instructional Video Applicants must spend a minimum of \$100,000 in in-state spending.

(2) 60% of the Filming Days must be completed in Texas.

(3) 70% of the combined total of paid Crew and paid Cast, including extras, which are paid by the Applicant, must be Texas Residents unless it is determined and certified by the [~~Texas Film~~] Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(h) Visual Effects Projects.

(1) Visual Effect Project for a Feature Film or Television Program:

(A) Applicants must spend a minimum of \$250,000 in in-state spending.

(B) 60% of the Filming Days must be completed in Texas.

(C) 70% of the paid Crew and 70% of the paid Cast, including extras, must be Texas Residents unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(2) Visual Effect Project for an Educational or Instructional Video or Commercial:

(A) Applicants must spend a minimum of \$100,000 in in-state spending.

(B) 60% of the Filming Days must be completed in Texas.

(C) 70% of the combined total of paid Crew and paid Cast, including extras, must be Texas Residents unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

§121.4. *Ineligible Projects.*

(a) The following types of projects are not eligible for grants under this program:

- (1) pornography or obscene material, as defined by Texas Penal Code, §43.21;[-]
- (2) news, current event or public access programming, political advertising, [(including public service announcements [Public Service Announcements] which advance a public policy or political position,)] or programs that include weather or market reports;
- (3) local events or religious services;
- (4) productions not intended for commercial, educational or instructional distribution;
- (5) sporting events or activities;
- (6) awards shows (unless broadcast on national network television to a national audience), galas, telethons or programs that solicit funds;
- (7) projects intended for undergraduate or graduate course credit;
- (8) application software, system software, or middleware;
- (9) casino-type video games used in a gambling device [Gambling Device], as such term is defined pursuant to Texas Penal Code, §47.01; or
- (10) Commercials [eommercials] or advertising for the State of Texas or any Texas state agency or department.

(b) Not every project will qualify for a grant. The Texas Film Commission (Commission) is not required to act on any application and may deny an application or eventual payment on an application because of inappropriate content or content that portrays Texas or Texans in a negative fashion, as determined by the [Texas Film] Commission, in a [moving image] project. In determining whether to act on or deny an application, the [Texas Film] Commission shall consider general standards of decency and respect for the diverse beliefs and values of the citizens of Texas. As part of the preliminary application process, the [Texas Film] Commission will review the Content Document, as defined in §121.8(a)(1)(C) of this chapter, and will advise the potential Applicant on whether the content will preclude the project from receiving a grant.

(c) Once an approved project has been completed, the [Texas Film] Commission will review the final content before issuing the grant, to determine if any substantial changes occurred during production to include content described by subsection (b) of this section.

§121.5. *Eligible and Ineligible In-State Spending.*

(a) The following are eligible expenditures:

- (1) Wages paid to Texas Residents for work performed in Texas, including additional compensation paid as part of a contractual or collective bargaining agreement.
- (2) Additional compensation or reimbursements paid to Texas Residents, including, but not limited to:
 - (A) mileage or car allowance;
 - (B) housing allowance; and
 - (C) box or kit rentals for use of personal equipment.
- (3) Workers compensation insurance premiums for Texas Residents, but only if the premiums are paid to a Texas-based insurance company or broker.

(4) Payroll company service fees for Texas Residents, but only if paid to a Texas-based payroll company that processes payroll within Texas.

(5) Payments made to Texas domiciled entities, sole proprietorships or individuals for goods and services used in Texas that are directly attributable to the Physical Production of the [moving image] project. In the case of Digital Interactive Media Productions, Visual Effects Projects and animated projects, the amount attributable to Pre-Production [pre-production] and research and development costs will be limited to an amount not to exceed 30% of the project's overall in-state spending.

(6) Payments for shipping on shipments originating in Texas (in the case of Federal Express, DHL or UPS shipments, the use of an Account Number of a Texas domiciled entity or sole proprietorship (where the address associated with the account number is printed) shall be conclusive proof of Texas origination for this purpose).

(7) Air travel to and from Texas on a Texas-based airline, including American Airlines and Southwest Airlines, or on a Texas-based air charter service, provided that an itemized receipt showing an itinerary and passenger name from the airline is provided confirming payment.

(8) Rentals of vehicles registered and licensed in the State of Texas or rented from a Texas domiciled entity or sole proprietorship, including, but not limited to, national rental car companies with a physical outlet in Texas.

(9) Fees paid to Texas Residents to compose, orchestrate and perform music that is specifically created for the project.

(10) Legal fees paid to Texas-based lawyers or law firms that are directly attributable to the Physical Production of the [moving image] project.

(11) Internet purchases, but only if purchased from a Texas domiciled entity or sole proprietorship or a retailer with a physical store or outlet in Texas. Items purchased must be shipped directly to Texas.

(12) Capital expenditures for an individual item from a Texas domiciled entity or sole proprietorship under \$1,000; spending on an individual capital item purchased for over \$1,000 which item is not exhausted during the course of Production is an eligible expenditure [acceptable Eligible Spending], so long as such item is sold at the end of Production [the production] and evidence of such sale is furnished to the Texas Film Commission (Commission). Such [; such] documentation must show that only the difference between the purchase price and the sale price is submitted as an eligible expenditure [Eligible Spending] and a copy of the check or receipt for the sale should be included as back up with the original purchase documentation.

(13) Location fees [Fees], if an executed location agreement [Location Agreement] by and between the Applicant and the location owner or owner's representative is provided to the [Texas Film] Commission with the Applicant's Expended Budget.

(b) The following are ineligible expenditures:

- (1) Payments made to non-Texas domiciled entities, or if a sole proprietorship or individual, to non-Texas Residents.
- (2) Payments made for goods and services not used in Texas.
- (3) Payments made for goods and services that are not directly attributable to the Physical Production of the [moving image] project.

(4) Payments made by Digital Interactive Media Production, Visual Effects Projects and animated projects for Pre-Production costs that exceed 30% of the project's overall in-state spending.

(5) Expenses related to distribution, publicity, marketing, or promotion of the project, including, but not limited to, promotional stills.

(6) Payments, ~~([other than properly allowable location fees, [Location Fees])~~ for facilities and automobiles that are part of a permanent/continuous business operation including, but not limited to, rental, lease or mortgage payments, utilities and insurance.

(7) Wages paid to non-Texas Residents, including additional compensation paid as part of a contractual or collective bargaining agreement.

(8) Payments made to a company, entity, association or person that acts as an agent or broker for companies, entities, associations or persons outside of Texas to provide goods, services or labor for the purpose of taking advantage of the Texas Moving Image Industry Incentive Program (also known as "pass-through" entities).

(9) Fees for story rights, music rights or clearance rights.

(10) Additional compensation or reimbursements paid to non-Texas Residents, including, but not limited to:

(A) mileage or car allowance;

(B) housing allowance; and

(C) box or kit rentals for use of personal equipment.

(11) Workers compensation insurance payments for non-Texas Residents.

(12) Payroll company service fees for non-Texas Residents or those paid to a non-Texas-based payroll company.

(13) Payments for shipments originating outside of Texas (unless, in the case of Federal Express, DHL or UPS shipments, an Account Number of a Texas domiciled entity or sole proprietorship has been used for such shipments and such Account Number is printed on the invoices with the Texas address associated with the Account Number).

(14) Payments for mobile and landline telephone service if the service or billing address is not in Texas.

(15) Payments for alcoholic beverages, cigarettes and tobacco products.

(16) Payments to adult oriented businesses.

(17) Payments for entertainment, including, but not limited to, parties, event tickets, movies, hotel mini-bar items, meals unrelated to the Physical Production of the project and personal gifts.

(18) Payments for tips and gratuities.

(19) Capital expenditures for an individual item over \$1,000 which item is not exhausted during the course of production, unless such purchase is from a Texas domiciled entity or sole proprietorship, the item is sold at the end of the production and evidence of such sale is furnished to the ~~[Texas Film]~~ Commission (such documentation must show that only the difference between the purchase price and the sale price is submitted as an eligible expenditure ~~[Eligible Spending]~~ and a copy of the check or receipt for the sale should be included as back up with the original purchase documentation).

(20) Payments to any business that sells alcohol or tobacco products reflected on receipts which are not itemized, even if the submitted item itself is otherwise eligible.

(21) On Commercial ~~[commercial]~~ productions where the Applicant is a production company rather than the client or ad agency, "talent handling fees," "overage fees" and "production fees," other than the Applicant's insurance fees from the actual column of the actual Association of Independent Commercial Producers (AICP) budget (if it does not exceed the original, awarded bid and if a Texas-based insurance company or broker is used), editorial or Postproduction ~~[post production]~~ fees from the actual column of the AICP budget (if such fees do not exceed the Postproduction ~~[post production]~~ fees on the original, awarded bid), and any bona fide internal billing items which do not exceed the usual and customary cost of the goods or services, such as when production company employees work directly on the production using equipment and/or studio space owned by the Applicant that is "rented" to the production in lieu of using an outside vendor; to be included, however, these items must have been budgeted on the original, awarded bid.

(22) Any payments made other than by the Applicant, including, but not limited to, payments made on behalf of the Applicant by a third party.

(c) The ~~[Texas Film]~~ Commission reserves the right to determine which expenses are eligible or ineligible.

§121.6. Grant Awards.

(a) Feature Films, ~~[and]~~ Television Programs, and Visual Effects Projects for Feature Films or Television Programs with total eligible in-state spending of ~~[must select the Texas Spend Option or the Texas Wage Option for their projects when submitting an application to the program. The selected option may be changed after the application is submitted, but not after the formal grant agreement has been signed. Grant awards will be calculated as follows]:~~

~~[(1) Texas Spend Option—projects with total eligible in-state spending of:]~~

~~(1) [(A)] At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.~~

~~(2) [(B)] At least \$1 million but less than \$3.5 [\$5] million will be eligible to receive a grant equal to 10% of eligible in-state spending.~~

~~(3) [(C)] At least \$3.5 [\$5] million will be eligible to receive a grant equal to 20% [15%] of eligible in-state spending.~~

~~[(2) Texas Wage Option—projects with total eligible in-state spending of:]~~

~~[(A) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 8% of eligible Wages paid to Texas Residents.]~~

~~[(B) At least \$1 million but less than \$5 million will be eligible to receive a grant equal to 17% of eligible Wages paid to Texas Residents.]~~

~~[(C) At least \$5 million will be eligible to receive a grant equal to 25% of eligible Wages paid to Texas Residents.]~~

(b) Digital Interactive Media Productions with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$3.5 [\$5] million will be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$3.5 [\$5] million will be eligible to receive a grant equal to 20% [15%] of eligible in-state spending.

(c) Reality Television Projects, Commercials, ~~[and]~~ Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instruction Videos with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million are eligible to receive a grant equal to 10% ~~[5%]~~ of total eligible in-state spending.

§121.7. *Underutilized and Economically Distressed Areas.*

(a) Projects~~;~~ not to include projects choosing the Texas Wage Option but including Digital Interactive Media Productions~~;~~ which complete at least 25% of their total Filming Days in Underutilized or Economically Distressed Areas may receive an additional 2.5% of total in-state spending. The additional 2.5% applies to all eligible spending in all areas of Texas; it is not restricted to the spending in Underutilized or Economically Distressed Areas~~[-Area spending].~~

~~[(b) Feature Films and Television Programs that choose the Texas Wage Option and that complete at least 25% of their total Filming Days in Underutilized or Economically Distressed Areas may receive an additional 4.25% of eligible Wages paid to Texas Residents. The additional 4.25% applies to all eligible Wages paid to Texas Residents; it is not restricted to Wages paid for work only in the Underutilized or Economically Distressed Areas.]~~

(b) ~~[(e)]~~ In the event that multiple locations are utilized within a single Filming Day, in order to calculate the 25% of total Filming Days in Underutilized or Economically Distressed Areas necessary to receive an additional 2.5% ~~[or 4.25%]~~ of total in-state spending ~~[or Wages, as the case may be]~~, the Texas Film Commission (Commission) may pro-rate a given Filming Day by number of shot locations reflected on production reports ~~[Production Reports]~~ furnished by an Applicant to the ~~[Texas Film]~~ Commission. For example, if eight locations are utilized in a Filming Day, and five are located in Underutilized or Economically Distressed Areas, 5/8 of that Filming Day will count in calculating the 25% of total Filming Days necessary to become eligible for the additional grant percentage.

(c) The Commission shall use maps to identify the areas that qualify for designation in accordance with §121.2(26) of this chapter. The maps in effect since August 28, 2011 shall expire on August 31, 2015 at which time the Commission shall update the maps. The Commission, having no obligation to do so, will endeavor to make such updated maps available in an electronic format on the Commission's Internet website up to 90 days prior to their effective date.

§121.8. *Grant Application.*

(a) Initial Submission.

(1) A Qualifying Application is defined to include:

(A) A completed Qualifying Application form ~~[Form]~~ for the Moving Image Industry Incentive Program;

(B) An itemized budget detailing only estimated Texas expenditures; and

(C) A Content Document:

(i) For Feature Films, ~~[and]~~ Television Programs (except Episodic Television Series) and Visual Effects Projects for Feature Films and Television Programs, a full script.

(ii) For Episodic Television Series, the full script of the first episode to be filmed in Texas.

(iii) For Commercials, ~~[and]~~ Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educa-

tional or Instructional Videos, the scripts, storyboards or detailed outlines/summaries of content.

(iv) For Digital Interactive Media Productions, a brief summary of game content providing sufficient detail concerning the themes, settings, story, characters and events to the Texas Film Commission (Commission) upon which to base its preliminary content approval consideration.

(v) For Reality Television Projects, a detailed treatment or outline~~[summary]~~ of program content.

(2) Qualifying Application forms ~~[Applications Forms]~~ for each type of project are available at the ~~[Texas Film]~~ Commission web site: <http://www.texasfilmcommission.com> ~~[http://governor.state.tx.us/film/]~~, or by contacting the ~~[Texas Film]~~ Commission if Internet access is not available or special needs facilitation is required.

(3) Applications will not be accepted earlier than 60 ~~[30]~~ calendar days prior to a project's Principal Start Date.

(4) Applications must be received no later than 5:00 p.m. Central Time on the fifth ~~[last]~~ Business Day prior to the Principal Start Date.

(5) Only one application and Applicant per project is allowed.

(6) Within 5 Business Days of the Principal Start Date indicated on the Qualifying Application form, an Applicant for a Feature Film, Television Program, Reality Television Project, Digital Interactive Media Production, Visual Effects Project or Educational or Instructional Video must confirm with the ~~[Texas Film]~~ Commission in writing, to include e-mail, that the production began on time. If the start of the project is delayed for more than 30 days, an application may be disqualified ~~[disarded]~~ and the Applicant must reapply. If an Applicant fails to confirm that the production began on time within such 5 Business Day period, the ~~[Texas Film]~~ Commission may, at its sole election but with no obligation to do so, disqualify the application.

(b) The Office of the Governor, as a state agency, must comply with the Texas Public Information Act (the "Act"). In the event that a public information request related to the Applicant and/or the application is submitted to the agency, the Office of the Governor will promptly notify the Applicant of the request if current contact information is available, take all appropriate actions with the Attorney General of Texas to prevent release of confidential information, including asserting exemptions under the Act, and provide the Applicant with full information and opportunity to participate in such process if current contact information is available.

§121.9. *Processing and Review of Applications.*

(a) All applications will be reviewed in the order they are received.

(b) Initial Review.

(1) Each application will go through an initial review process when the Qualifying Application has been received.

(A) If a project submits a Qualifying Application with required materials, the Applicant will receive an e-mail notifying them that the Texas Film Commission (Commission) has received their complete application and the preliminary eligibility determination process will begin.

(B) If a project submits a Qualifying Application without the required materials, the Applicant will receive an e-mail notifying them that their application requires additional materials or documentation, and that not receiving them by the fifth Business Day prior

to the project's Principle Start Date [in a timely manner] may result in an application being disqualified.

(2) Applicants will have the ability to amend information on their application. The [Texas Film] Commission may determine whether an Applicant's amendment(s) will require them to reapply or not.

(c) Preliminary Eligibility Determination.

(1) During the preliminary eligibility determination process, the [Texas Film] Commission will review the project's Qualifying Application and budget to identify eligible expenditures and to determine if the Applicant meets the minimum program requirements for in-state spending, Texas Filming Days and Texas Residency.

(2) The [Texas Film] Commission will also review the Content Document, as defined in §121.8(a)(1)(C) of this chapter, to determine if it is appropriate.

(3) Finally, the [Texas Film] Commission will examine the Qualifying Application in light of the following criteria to assess, in the aggregate, the potential magnitude of the economic impact of the project in the State of Texas:

(A) The financial viability of the Applicant and the likelihood of successful project execution and planned spending in the State of Texas;

(B) Proposed spending on existing state production infrastructure (such as soundstages and industry vendors);

(C) The number of Texas jobs estimated to be created by the project;

(D) The ability to promote Texas as a tourist destination through the conduct of the project and planned expenditure of funds;

(E) The magnitude of estimated expenditures in Texas; and

(F) Whether the project will be directed or produced by an individual who is a Texas Resident (where the term "produced by" is intended to encompass a non-honorary producer with direct involvement in the day to day production of the project, but above the level of line producer).

(4) The Applicant will receive an e-mail notifying them that the Qualifying Application has been approved if:

(A) The Qualifying Application meets all minimum program requirements for in-state spending, Texas Filming Days and Texas Residency, as determined by the [Texas Film] Commission;

(B) The [Texas Film] Commission determines to grant an award based on the criteria specified in paragraph (3) of this subsection;

(C) The Content Document is appropriate; and

(D) Appropriated funds are then available at such time of determination.

(5) If the [Texas Film] Commission denies a Qualifying Application, the Applicant will receive an e-mail notifying them that the Qualifying Application has been denied. The notice will inform the Applicant whether the denial is based on failure to meet the minimum program requirements, insufficient economic impact or inappropriate content. Qualifying Applications will be assessed at the point in time at which they are received, and will not enter any queue in the event they are denied.

(6) All funding decisions made by the Commission are final and are not subject to appeal. Neither the approval of the Qualifying Application nor any award of funds shall obligate the Commission in any way to make any additional award of funds.

(d) Grant Agreement.

(1) Upon [Texas Film] Commission approval of the Qualifying Application, a grant agreement will be executed between the [Texas Film] Commission and the Applicant. The estimated grant amount will be based upon the Applicant's estimated in-state spending [and election, as the case may be, of the Texas Spend Option or the Texas Wage Option, as applicable].

(2) The grant agreement must be returned to the [Texas Film] Commission with original signatures; failure to return could cause the [Texas Film] Commission to disqualify the project.

~~{(3) Feature Films and Television Programs that must choose between the Texas Spend Option and the Texas Wage Option to calculate their grant amount will not be able to change the option selected once the grant agreement has been signed and returned to the Texas Film Commission.}~~

(e) Periodic Tracking and Review. Once the grant agreement has been executed by both parties, the [Texas Film] Commission may periodically review production activity including, but not limited to, in-state spending, production locations and number of Texas Residents hired, and may require documentation for all of the above.

(f) Encumbrance of Funds.

(1) Upon [Texas Film] Commission approval of a Qualifying Application and receipt of a signed Grant Agreement, the Office of the Governor will encumber funds for the project.

(2) The amount encumbered for a project will be equal to the estimated grant amount on the Grant Agreement.

(3) To encumber funds, an Applicant must have a Texas Payee Identification Number. Applicants without an existing Texas Payee Identification Number must submit a completed W-9 Form and a Texas Application for Payee Identification Number Form.

(4) Provided sufficient funds are then available, the amount encumbered may be adjusted by the Commission ~~[Office of the Governor]~~, at its sole election having no obligation to do so, but only if an Applicant amends the estimated Texas spending amount on their Qualifying Application in writing, prior to submitting their Expended Budget as described in §121.11 of this chapter, ~~or ultimately submits spending documentation so that it affects their estimated grant amount.~~

(g) Verifying Texas Residency.

(1) In order to verify Texas Residency, the Applicant shall provide the [Texas Film] Commission with completed Declaration of Texas Residency Forms for each Texas Resident Crew and Cast member.

(2) To be considered a Texas Resident, a Crew or Cast member must complete Sections I, II and III of the Declaration of Texas Residency Form. Section III must be completed with a valid Texas driver license, a valid Texas identification card or a current Texas voter registration. A full-time student of a Texas Institution of Higher Education, as defined by Texas Education Code §61.003, who does not have a Texas driver license, Texas identification card or Texas voter registration may complete Section III of the form with a current student identification card issued by a Texas Institution of Higher Education.

(3) A minor who does not have a Texas driver license, Texas identification card or Texas voter registration may have a Texas Resident parent or legal guardian complete Section III of the form, so long as such parent or legal guardian also signs Section III of the form, indicating such relationship to the minor.

(4) A representative of the Applicant must complete Section IV of the Declaration of Texas Residency Form.

(5) In the event that a Crew or Cast member does not possess any of the three documents specified in Section III of the Declaration of Texas Residency Form, and the project consists of at least 30 Filming Days, Texas Residency may also be verified by presenting one of the following documents naming said Crew or Cast member and dated at least 120 days and no more than 13 months prior to and the project's Principal Start Date:

(A) an executed agreement for the lease of residential real property located in Texas;

(B) an executed HUD-1 settlement statement showing the purchase of residential real property located in Texas; or

(C) a notice of appraised value or bill assessing property tax on residential real property located in Texas.

(h) Texas Film Commission Logo. Having [Upon written request by an Applicant, having] no obligation to do so, the [Texas Film] Commission may require [provide, having no obligation to do so, the Texas Film Commission logo to the Applicant so that] the Applicant to [ean] include the Texas Film Commission [such] logo in the closing credits of a Feature Film, Reality Series or Television Production, or in the credits of a Digital Interactive Media Production.

§121.10. Disqualification of an Application.

(a) A Qualifying Application may be disqualified at any time if a project does not meet the necessary requirements or if a Qualifying Application is incomplete. If a project is disqualified, the Applicant will be notified by e-mail. Qualifying Applications that have been disqualified may be resubmitted with the required changes or additional information, no earlier than 60 [30] calendar days before the Principal Start Date, and no later than 5:00 p.m. Central Time on the fifth Business Day preceding the Principal Start Date.

(b) In the case of a change in principal start or completion date, the Applicant must notify the Texas Film Commission (Commission) in writing, to include e-mail, of the new principal start or completion date, and must give the reason(s) for the change. If the start of the project is delayed repeatedly or for more than 30 days, a Qualifying Application may be disqualified and the Applicant must reapply.

(c) A Qualifying Application may also be disqualified for reasons including, but not limited to:

(1) Failure to submit required documents and notifications, or additional documents as requested or as required by this chapter;

(2) Failure to meet minimum requirements for in-state spending, number of Texas Residents hired, and/or percentage of Filming Days;

(3) Submission of false information;[-]

(4) Inappropriate content as described in Texas Penal Code [Annotated], §43.23 or content described by §121.4(b) of this chapter;

(5) Lack of available funding;

(6) Ineligible project as listed in §121.4 of this chapter;

(7) Pursuant and subject to §121.8(a)(6) of this chapter, if an Applicant fails to confirm that the production began on time; [or]

(8) Lack of meaningful production activity on a project, as determined in the Commission's sole discretion, for a period of at least six months; or

(9) [(8)] Voluntary notification in writing by the Applicant to the [Texas Film] Commission of the cancellation of the project.

§121.11. Confirmation and Verification of Texas Expenditures.

(a) The Applicant should collect, authenticate and assemble an Expended Budget and all final verifying documentation, including a CPA Audit Opinion if required by this chapter, and submit it to the Texas Film Commission (Commission) within 60 days of completing Texas expenditures. The [Texas Film] Commission will perform the initial review, and a compliance review may [audit will] be performed by the Office of the Governor's Compliance and Oversight Division.

(b) The Expended Budget must [should] be in a format acceptable to the Commission [Office of the Governor] and must [should] contain all final verifying documentation including, but not limited to:

(1) A Texas Moving Image Industry Incentive Program Verification Worksheet confirming that all program requirements have been met and final verifying documentation is complete;

(2) Expenditure reports that document all eligible Texas spending;

(3) Copies of all invoices, receipts, pay orders and any other documentation considered necessary by the Commission [Office of the Governor] for auditing the expenditure reports;

(4) Completed Declaration of Texas Residency Forms for all Texas Resident Crew and Cast members;

(5) Crew and Cast lists that document Crew and Cast members, which also indicate whether such Crew and Cast members were paid or not (regardless of whether the Applicant was the source of payment), the absence of which indication shall create the presumption that such Cast and Crew were indeed paid;

(6) Call sheets, production reports or production calendars that document all production days;

(7) The CPA Audit Opinion, if required by §121.15 of this chapter;

(8) Final content;

(A) Feature Films, [and] Television Programs, and Visual Effects Projects must submit a copy of the [final script or] final content for review.

(B) Commercials, Digital Interactive Media Productions, Reality Television Projects and Educational or Instructional Videos must submit final content (or online access to final content) for review.

(9) Additional documentation may be required including, but not limited to, the following:

(A) Financials, including all reports of expenditures.

(B) Proof of payment for expenditures.

[(C) Feature Films and Television Programs that choose the Texas Wage Option and that spend less than \$5 million in eligible Wages must provide expenditure reports documenting all eligible Texas spending (not just eligible Wage spending) in order to establish the percentage for calculating their grant amount (unless such percentages are established by expended Wages alone).]

(c) It is the responsibility of the Applicant to ensure that the final verifying documentation submitted in the Expended Budget is cor-

rect and complete. Once the Expended Budget is accepted [for review] by the [Texas Film] Commission for review, the Applicant will not be able to submit additional information unless requested to do so by the Commission [Office of the Governor].

§121.12. *Disbursement of Funds.*

(a) Disbursement of funds will not occur until the Applicant has paid all financial obligations incurred to the State of Texas, and a final compliance audit has been completed and approved.

(b) In the event of unpaid financial obligations to the State of Texas, the Office of the Governor will determine whether or not to withhold grant disbursement, pending settlement.

(c) Payment Assignment.

(1) An Applicant can assign payment of the grant to a third party.

(2) To assign payment the Applicant must submit:

(A) A Texas Application for Payee Identification Number Form with Section IV completed[-]; and

(B) An assignment agreement completed and signed by the Applicant and assignee.

§121.13. *Texas Heritage Project.*

(a) Feature Films and Television Programs designated by the Texas Film Commission (Commission) as a Texas Heritage Project may receive an additional 2.5% of total in-state spending.

(b) When evaluating a project as a Texas Heritage Project, the Commission will consider:

(1) Current and likely future effect on the promotion of Texas' historic, cultural, natural or man-made resources;

(2) Current and likely future economic impact on Texas communities through direct production spending and tourism;

(3) The significant involvement in the project, as determined by the Commission, by Texas residents in positions of significant creative or economic influence, such as producer, director, or investor; and

(4) The portrayal of Texas and Texans in a positive fashion, as determined by the Commission.

(c) Designation as a Texas Heritage Project is discretionary and is made by sole determination of the Commission. Only a select few projects will qualify for this designation. The Commission is not required to make this designation for any project and may decline to do so for any reason.

(d) Up to \$2,500,000 of Texas Moving Image Industry Incentive Program funds may be used during each biennium for awarding the additional grant to designated Texas Heritage Projects.

§121.14. *Revocation and Recapture of Incentives.*

(a) An Applicant's eligibility for funds can be revoked after the project is completed for reasons including, but not limited to, those enumerated in §121.10(c) of this chapter, [~~such as obscene or inappropriate content; failure to meet minimum qualification requirements; failure to provide requested documentation; providing false information;~~] or inability to complete the project.

(b) If an Applicant has already received the grant and is determined to not meet a requirement in any way, the Texas Film Commission [State of Texas] can require that the Applicant refund any sum of the grant money paid to the Applicant by the State of Texas.

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 July 1, 2013.

TRD-201302741

David Zimmerman

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Texas Film Commission

Earliest possible date of adoption: August 11, 2013

For further information, please call: (512) 936-0181



TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681.1 - 681.17, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101 - 681.103, 681.111 - 681.113, 681.121, 681.123 - 681.127, 681.141, 681.142, 681.144 - 681.146, 681.161, 681.162, 681.164 - 681.172, 681.181, 681.182, 681.184, 681.201 - 681.204, 681.251 and 681.252, new §681.114 and §681.143 and the repeal of §681.147 concerning the licensing and regulation of professional counselors.

BACKGROUND AND PURPOSE

Texas Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 681.1 - 681.17, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101 - 681.103, 681.111 - 681.113, 681.121, 681.123 - 681.127, 681.141, 681.142, 681.144 - 681.146, 681.161, 681.162, 681.164 - 681.172, 681.181, 681.182, 681.184, 681.201 - 681.204, 681.251 and 681.252 have been reviewed, and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed; however, changes are needed as described in this preamble and are the result of the comprehensive rule review undertaken by the board and the board's staff. Section 681.147 is proposed for repeal as explained in this preamble.

In general, each section was reviewed and proposed for reoption in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

New §681.114 establishes procedures for issuance of licenses to military spouses, as required by Senate Bill 1733, 82nd Legislature, 2011, amending Texas Occupations Code, Chapter

55, relating to the licensing process for military spouses. New §681.143 specifies the types of activities which will be excluded from credit as continuing education hours. This new section includes the information in repealed §681.147; the new placement of this section is necessary to ensure better organization and clarity.

SECTION-BY-SECTION SUMMARY

This section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications are proposed for the chapter in order to meet the objectives of the agency review of rules as described in this preamble, such as improving draftsmanship and ensuring clarity.

Non-substantive changes were made to various sections of the chapter, including 681.1 - 681.17, 681.41 - 681.47, 681.50 - 681.52, 681.71, 681.81 - 681.83, 681.91 - 681.93, 681.113, 681.121, 681.124 - 681.127, 681.141, 681.144 - 681.146, 681.161, 681.162, 681.166, 681.167, 681.170, 681.171, 681.181, 681.182, 681.184, 681.201 - 681.204, 681.251 and 681.252.

The following changes are proposed concerning Subchapter A (relating to the Board).

The amendment to §681.2 expands the definition of Art Therapy, adds definitions for the terms "Direct client contact," "Indirect hours" and "LPC" and updates and clarifies federal legal references. As a result of the new definitions, the definitions are renumbered accordingly.

The amendment to §681.4 specifies the conditions under which the board may be obliged.

Amendments to §681.10 delete subsection (c) relating to the executive director's general supervision and delegation of staff and renumber the remainder of the section accordingly.

The amendment to §681.12 removes the department's authority to set copying fees.

Amendments to §681.14 add online payment as a method of paying a fee; in addition, subsection (d) is updated to reflect the ability of the department to collect subscription and convenience fees.

The following changes are proposed concerning Subchapter B (relating to Authorized Counseling Methods and Practices).

Amendments to §681.31 change the terms "marriage counseling" to "couples counseling" and "chemical dependency counseling" to "addictions counseling" and add "crisis counseling" as an authorized counseling method and practice.

The following changes are proposed concerning Subchapter C (relating to Code of Ethics).

Amendments to §681.41 expand the requirements a licensee must provide to a client in writing prior to providing services and the use of technological means as a method of communication in certain circumstances. Portions of existing subsection (h) of this section are moved to new subsection (i). Separating existing subsection (h) into two separate subsections ensures better clarity and organization. As a result of new subsection (i), the remainder of this section is renumbered to reflect this change. Other amendments to this section recognize a licensee's mandatory compliance with Health and Safety Code, Chapters 181 and 611. In addition, amendments to this section delete existing subsections (z) and (aa). Portions of existing (z) and (aa) are in-

cluded in new subsection (t)(6), which also allows a licensee to require only the applicable part of the divorce decree, rather than the entire document, unless a federal or state statute provides an exemption to the documents in order to ensure a larger population of children can be served and provision of services delivered more effectively and expeditiously. Existing subsection (bb) is deleted in its entirety and moved to amended §681.41(e)(8) for better organization.

Amendments to §681.42 define allowable sexual contact by an LPC with a former client, LPC-Intern or student.

Amendments to §681.45 add Texas Health and Safety Code, Chapter 181, to those laws that a licensee must follow concerning access to mental health records and confidential information.

Amendments to §681.48 reorganize the section as portions of existing subsection (a) are removed and placed in new subsection (e).

Amendments to §681.49 emphasize that misrepresentation of a mental health care professional's services may be deemed as false, misleading, deceptive advertising or advertising not readily subject to verification. Reformatting and non-substantive changes were also made to this section.

Amendments to §681.51 expand the grounds on which the board may deny licensure to an applicant, as well as factors taken into consideration by the board in determining an applicant's fitness for licensure.

Amendments to §681.52 clarify the allowable services an LPC Intern can provide.

The following changes are proposed concerning Subchapter D (relating to Application Procedures).

Amendments to §681.72 reflect the ability of an applicant to submit official transcripts to the board from the school by either mail or e-transcript in order to promote flexibility for the applicant. Additionally, amendments to this section reflect the waiver of the five-year examination rule for applicants who apply for license by reciprocity. Subsection (d) is moved to subsection (c), subsection (e) is deleted, and the remainder of the section is renumbered accordingly.

Amendments to §681.73 increase the amount of client contact hours under the supervision of a licensed professional counselor with an art therapy specialty designation from 1,000 to 1,500 hours. This change was made in order to reflect standard practice within the profession.

The following changes are proposed concerning Subchapter E (relating to the Academic Requirements for Licensure).

Amended §681.81 expands the required documents that must be provided by an applicant who attended or graduated from a foreign university. Amendments to this section also add new subsection (c) concerning the board's consideration, on a case-by-case basis, of additional evidence from an applicant who attended or graduated from a foreign university if the applicant has difficulty securing documentation of this experience. The rest of the section is renumbered to reflect this addition. Additionally, amendments to this section add new subsection (h) which limits the applicability of a graduate degree and coursework to that earned 10 years or less prior to the licensure application date, absent certain exceptions.

Amended §681.82 stipulates applicants for licensure must earn 60 semester hours in a planned graduate counseling or related

field beginning on August 1, 2017; the current requirement is 48 semester hours.

Amendments to §681.83 change subsection (a) to require an applicant complete at least one three-hour course in particular subject areas and add new subsections (c) and (d) which specify the types of courses which may be used to meet the new 60-semester hour graduate program reflected in amended §681.82 and that passage of the National Counselor Exam does not guarantee satisfaction of minimum Texas state licensure requirements.

The following are proposed changes concerning Subchapter F (relating to Experience Requirements for Licensure).

Amendments to §681.91 add new subsection (d) to allow an LPC intern only one LPC board-approved supervisor on file at any given time. The rest of the section is renumbered accordingly to reflect this addition. Amendments to this section also add new subsection (h) to mandate that applicants who previously held temporary licenses in Texas must reapply under the standards in place at the time of application. The language in subsection (h) replaces former acceptable standards. Other amendments to §681.91 specify when supervision of an intern is completed, delete outdated requirements regarding temporary licenses and add the specific steps an LPC Intern must take before receiving supervision from a new supervisor or at a new supervision site.

Amendments to §681.92 reflect the need for specific types of supervision an LPC Intern must receive and that experience hours earned via technological means of communication may count for no more than one hundred of the total supervised experience hours. Moreover, beginning on August 1, 2017, an internship may only commence once an applicant has completed a planned graduate program of at least 60 semester hours. Changes to this section also allow an internship experience to include counseling services to families and couples as acceptable clients and increase the number of direct supervision hours to four hours per month in a face-to-face or live internet web cam supervision. Additional amendments to this section add new subsections (h), (m), and (n). The section is renumbered accordingly to accommodate these changes. These new subsections require supervisors to review board rules during designated times, cover changes to supervision or supervision site as well as requirements an LPC Intern must meet to upgrade to a full LPC status.

Amendments to §681.93 expand the requirements an LPC must meet prior to applying for supervision status. Additional amendments to this section require supervision status applications be submitted within certain timeframes and remove the exemption previously allowed to licensees in an accredited doctorate program. This section also reflects that disciplinary actions taken against an LPC Intern may also result in his or her supervisor being disciplined. Other changes to §681.93 include requiring accurate documentation of supervised experience be submitted within a certain time frame and impose administrative penalties on supervisors who violate board rules.

The following changes are proposed concerning Subchapter G (relating to Licensure Examination).

The amendment to §681.101 deletes subsection (f) regarding the necessity for LPC Interns to pass the National Counselor Exam in lieu of the Texas exam prior to the expiration of their temporary licenses.

The amendment to §681.102 deletes a particular method of notifying applicants of examination results.

Amended §681.103 deletes the previous language contained in subsection (b) and replaces it with new language which requires applicants who fail the licensure examination twice to either wait for a period of two years or to complete nine graduate hours in the applicant's weakest portion of the examination prior to retesting, provided the applicant earns at least a grade of "B" in the completed graduate hours. Some of the language in old subsection (b) is incorporated in the new version of this subsection.

The following are proposed as changes concerning Subchapter H (relating to Licensure).

Amendments to §681.111 delete subsection (c) relating to provisional licenses, as this subject is more thoroughly covered in §681.112. The remaining subsections are renumbered accordingly.

Amendments to §681.112 no longer permit a provisional license to be issued to an applicant who holds only an art therapy license in another state, territory or jurisdiction of the United States since current law requires a full LPC license be secured before an art therapy license may be obtained. New subsection (d) is added to allow certain provisional licensees to qualify and be issued a regular LPC license. The remaining subsections are renumbered accordingly to reflect this addition.

New §681.114, "Licensing of Military Spouses," sets forth the alternative licensure procedure for the spouse of a person serving on active duty as a member of the United States armed forces if the military spouse holds a license as a professional counselor in another state. New §681.114 adds the licensing process for military spouses as required by Senate Bill 1733, 82nd Legislature (Regular Session), 2011.

Changes concerning Subchapter I (relating to the Regular License Renewal; Inactive and Retirement Status) are proposed as follows.

The amendment to §681.123 provides that continuing education information is part of the required information which must be received before the board renews a license.

The amendment to §681.124 adds new subsection (e) to allow the board to renew an expired license without reexamination, provided certain conditions are met.

The amendment to §681.125 removes the references to LPC Intern inactive status.

The following changes are proposed concerning Subchapter J (relating to Continuing Education Requirements).

The amendment to §681.126 removes language in subsection (c) relating to eligibility for a new license.

Amendments to §681.141 remove January 1, 2007 as the beginning date a licensee must successfully complete the Texas Jurisprudence Examination each renewal period and require an LPC Supervisor to complete an eight-hour refresher course in supervision every four years as opposed to the previous requirement of three hours of continuing education directly related to supervision practices.

Amendments to §681.142 remove subsection (a)(1) which previously allowed teaching a graduate level course as an acceptable type of continuing education hours. The remainder of the subsection is renumbered accordingly. New subsection (a)(6) is added to reflect that attendance at a complaints committee may be credited as continuing education hours in certain circumstances.

New §681.143 specifies the type of activities for which the board will not give credit to a licensee as continuing education hours and incorporates provisions of repealed §681.147.

The amendment to §681.145 allows certain types of teaching to be credited as continuing education hours.

Section 681.147 is repealed and provisions of it are moved to new §681.143 for better organization and placement.

The following are proposed changes concerning Subchapter K (relating to Complaints and Violations).

The amendment to §681.164 defines moral turpitude.

Amended §681.165 changes a portion of the section title from "Temporary Suspension" to "Emergency Suspension" to better explain the type of suspension the board is allowed to impose.

Amendments to §681.168 specify that violations of the Act or Chapter 681 of this title must be alleged before the Board may consider the surrender of an LPC's license.

The amendment to §681.169 changes the name of the section in order to delineate the rationale for license suspension under this section.

The amendment to §681.172 specifies the font size to be used in a portion of the Notice of Violation.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the sections are in effect, there will not be fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The proposal will not affect a local economy. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the effective licensing and regulation of professional counselors. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the State and providers.

REGULATORY ANALYSIS

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

and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

SUBCHAPTER A. THE BOARD

22 TAC §§681.1 - 681.17

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.1. General.

The purpose of this chapter is to implement [This chapter implements] the provisions of Texas Occupations Code, Chapter 503 (the Licensed Professional Counselor Act), concerning the licensing and regulation of professional counselors.

§681.2. Definitions.

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

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

(4) Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem. [The practice of professional counseling through services that use art media to promote perceptively, intuitive, affective, and expressive experiences that alleviate distress and emotional, behavioral, or social impairment.]

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

(7) Counseling-related field--A mental health discipline utilizing human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(8) (No change.)

(9) Direct client contact--Time spent counseling with clients.

(10) [(9)] Health care professional--Any person [A licensee or any other person] licensed, certified, or registered by the state in a health related profession.

(11) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(12) [(40)] License--A regular license, regular license with art therapy specialty designation, provisional license, or temporary license issued by the board.

(13) [(44)] Licensee--A person who holds a regular license, regular license with art therapy specialty designation, provisional license, or temporary license.

(14) LPC--A person holding a regular license as a professional counselor with authority to practice in independent practice.

(15) [(42)] LPC Intern--A person who holds a temporary license to practice counseling.

(16) [(43)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(i) (2012) [§1.6033-2(g)(5)(i)(1982)];

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(17) [(44)] Supervisor--A person approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements), to supervise an LPC Intern.

§681.3. Meetings.

(a) (No change.)

(b) The chair may call meetings after consultation with board members or by a majority of members [se] voting at a regular meeting.

(c) (No change.)

§681.4. Transaction of Official Business.

(a) The board shall transact official business only when in a legally constituted meeting with a quorum present. A quorum [of the board] necessary to conduct official business is a majority of the members.

(b) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board or when not in accordance with board rules.

(c) (No change.)

§681.5. Agendas.

(a) Prior to each meeting the [The] executive director shall prepare and submit [is responsible for preparing and submitting] an agenda to each member of the board [prior to each meeting] which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chair.

(b) (No change.)

§681.6. Minutes.

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

(c) The official minutes of the board meetings shall be kept in an office of the department [the office of the executive director] and shall be available to any person desiring to examine them.

§681.7. Elections.

(a) (No change.)

(b) A vacancy which occurs in the office of vice-chair may be filled at any regular meeting [as required].

§681.8. Officers.

(a) (No change.)

(b) The chair is authorized by the board to make day-to-day [minor] decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

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

§681.9. Committees.

(a) The board or the chair may establish committees deemed necessary to fulfill [carry out] board responsibilities.

(b) - (g) (No change.)

§681.10. Executive Director.

(a) The executive director of the board shall be an employee of the department appointed by the Commissioner of the Department of State Health Services, with the advice, approval, and consent of the board.

(b) (No change.)

[(e) The executive director shall exercise general supervision over persons employed in the administration of the Act. The executive director may delegate responsibilities to other staff members when appropriate.]

(c) [(d)] The executive director shall be responsible for the initiation of complaint investigations and for the presentation of formal complaints.

(d) [(e)] The executive director shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory authority.

(e) [(f)] The executive director shall be responsible for assembling and evaluating materials submitted by an applicant for licensure. Determinations made by the executive director that propose denial of licensure are subject to the approval of the appropriate committee of the board which shall make the decision on the eligibility of the applicant.

§681.11. Reimbursement for Expenses.

A board member is entitled to receive per diem and transportation expenses as provided by the General Appropriations Act.

§681.12. *Official Records of the Board.*

(a) (No change.)

(b) When a request is [would be] unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving duplicate copies at the requester's cost.

(c) Costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester. [The charge for copies shall be set by the department.]

(d) (No change.)

§681.13. *Impartiality and Non-discrimination.*

(a) The board shall make decisions in the discharge of its statutory authority without regard to a [any] person's age, race, religion, ethnicity, sex, disability, national origin, or genetic information.

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

§681.14. *Licensing Fees.*

(a) Licensing fees are as follows:

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

(3) late renewal fee:

(A) 1-90 days after license expiration--\$125; and

(B) 91-365 days after license expiration--\$150.

(4) - (8) (No change.)

(b) (No change.)

(c) Remittances submitted to the board in payment of a required fee may be in the form of a personal check, cashier's check, [or] money order, or online payment.

(d) For all applications and renewal applications, the department [board] is authorized to collect subscription and convenience fees, in amounts approved by the Board of the Department of Information Resources, [determined by the Texas Online Authority,] to recover costs associated with application and renewal application processing through the state electronic Internet portal. [www.texas.gov.]

(e) (No change.)

§681.15. *Processing Procedures.*

Time periods. The board shall comply with the following procedures in processing applications for a license and renewal of a regular license: [-]

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

(3) The period of time from the receipt of the application for renewal of a regular license until the renewal card is issued or written notice is given that the application is deficient and additional specific information is required shall be 20 working days. The regular license renewal may be issued in lieu of the notice of acceptance. The [period of] time from the receipt of the last item necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal shall be 20 working days.

§681.16. *Petition for the Adoption of a Rule.*

(a) A person has the right to [may] petition the board to adopt a rule.

(b) - (i) (No change.)

§681.17. *Request for Criminal History Evaluation Letter.*

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

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

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

(c) The board [department] has the same authority to investigate a request submitted under this subsection and the requester's eligibility that the board [department] has to investigate a person applying for a license.

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

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

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

Filed with the Office of the Secretary of State on June 27, 2013.

TRD-201302719

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 11, 2013

For further information, please call: (512) 776-6972



SUBCHAPTER B. AUTHORIZED
COUNSELING METHODS AND PRACTICES

22 TAC §681.31

STATUTORY AUTHORITY

The amendment is authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendment affects Texas Occupations Code, Chapter 503.

§681.31. *Counseling Methods and Practices.*

The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained and competent in the use of such methods, techniques, or modalities. Authorized counseling methods techniques and modalities may include, but are not restricted to, the following:

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

(3) couples [marriage] counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples;

(4) (No change.)

(5) addictions [chemical dependency] counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;

(6) - (10) (No change.)

(11) psychotherapy which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and/or [and] strategies to assist clients in their efforts to recover from mental or emotional issues [illness];

(12) play therapy which utilizes play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as a part of the therapist's role in helping children overcome their social, emotional, and mental issues [problems];

(13) hypnotherapy which utilizes the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional issues [disorders] and addictions;

(14) - (15) (No change.)

(16) assessing and appraising, in compliance with §681.43 of this title (relating to Testing), which utilizes formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental disorders [problems]; but does not permit the diagnosis of a physical condition or physical disorder; [and]

(17) consulting which utilizes the application of specific principles and procedures in counseling to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations but not considered direct client contact for LPC-Interns; and[-]

(18) crisis counseling which focuses on short term counseling interventions to address immediate situations including factors such as safety and immediate needs.

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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Glynda Corley

Chair

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SUBCHAPTER C. CODE OF ETHICS

22 TAC §§681.41 - 681.52

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.41. General Ethical Requirements.

(a) (No change.)

(b) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health [services] organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(c) (No change.)

(d) A licensee shall make reasonable efforts to discourage [prevent] others whom the licensee does not control, from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee shall take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee shall provide counseling [treatment intervention] only in the context of a professional relationship. Prior to providing services a [A] licensee shall inform an individual in writing [before services are provided] of the following:

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

(6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor; On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.]

(7) the name, address and telephone number of the board for the purpose of reporting violations of the Act or this chapter; and

(8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(f) (No change.)

(g) Technological means of communication may be used to facilitate the therapeutic counseling process which has already been established. Technological means may be used in crisis counseling with no previous counseling relationship.

~~(g)~~ Where the client is in one location and the counselor is in another, technological means of communication may be used to facilitate the therapeutic counseling process.]

(h) In accordance with the provisions of the Act, §503.401(a)(4), a licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional.

(i) A licensee employed or under contract with a chemical dependency facility or a mental health facility shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.

(j) ~~(+)~~ A licensee shall not engage in activities for the licensee's personal gain at the expense of a client.

(k) ~~(+)~~ A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee shall first inform the client of the licensee's personal and/or business interest therein. A licensee shall not exert undue influence in promoting such activities, services or products.

(l) ~~(+)~~ A licensee shall set and maintain professional boundaries.

(m) ~~(+)~~ Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may engage in a non-therapeutic relationship with a client if the relationship begins more than two years after the end of the counseling relationship and the non-therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may engage in sexual contact with a client if the contact begins more than five years after the end of the counseling relationship and the non-therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate that there has been no exploitation and that the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including but not limited to the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

(5) The licensee shall not provide counseling services to previous or current:

- (A) family members;
- (B) personal friends;
- (C) educational associates; or
- (D) business associates.

(6) The licensee shall not give or accept a gift from a client or a relative of a client valued at more than \$50, or borrow or lend

money or items of value to clients or relatives of clients or accept payment in the form of goods or services rendered by a client or relative of a client.

(7) The licensee shall not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(n) ~~(+)~~ The licensee shall not knowingly offer or provide counseling ~~treatment intervention~~ to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee shall request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

(o) ~~(+)~~ A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(p) ~~(+)~~ In individual and group counseling settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within a group or from individual counseling.

(q) ~~(+)~~ For each client, a licensee shall keep accurate records of the intake assessment, the dates of counseling treatment intervention, principal treatment methods, progress ~~or ease~~ notes, treatment plan, and billing information.

(r) ~~(+)~~ Records held by a licensee shall be kept for a minimum of five years from the date of the last contact with the client.

(s) ~~(+)~~ Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local governmental agencies; or their political subdivisions or programs are not required to comply with subsections ~~(p) and~~ (q) and (r) of this section.

(t) ~~(+)~~ A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(1) Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(2) Pursuant to Texas Health and Safety Code, Chapter 611, ~~on~~ ~~(+)~~ the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) A licensee may not knowingly overcharge a client.

(4) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention that the licensee knows was not provided or knows was improper, unreasonable, or unnecessary.

(5) A licensee shall comply with requirements of Texas Health and Safety Code, Chapters 611 and 181, concerning the release of mental health records and confidential information.

(6) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee shall maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

(u) [(t)] A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.

(v) [(u)] Upon termination of a relationship if professional counseling is still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(w) [(v)] A licensee shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

(x) [(w)] A licensee shall not knowingly over treat a client.

(y) [(x)] A licensee shall not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice of counseling.

(z) [(y)] A licensee or an applicant for licensure shall not participate in any way in the falsification of applications for licensure or renewal of license.

[(z)] A licensee shall comply with the requirements of Texas Health and Safety Code, Chapter 611, concerning the release of mental health records and confidential information.]

[(aa) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable divorce decree. A licensee shall maintain these documents in the client's record.]

[(bb) A licensee shall establish a plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice. A licensee shall inform each new client of the plan.]

§681.42. Sexual Misconduct.

(a) For the purpose of this section the following terms shall have the following meanings.

(1) "Mental health [services] provider" means a licensee or any other licensed mental health professional, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy. Mental health [services] provider also includes employees of these individuals [the above] or employees of a treatment facility.

(2) (No change.)

(3) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or relationship [marital] dysfunction.

(4) (No change.)

(b) A licensee shall not engage in sexual contact with or sexual exploitation of a person who is:

(1) a client as defined in §681.2(6) [~~§681.2(7)~~] of this title (relating to Definitions);

(2) (No change.)

(3) a student of a licensee at an educational institution at which the licensee provides professional or educational services.

(4) Sexual contact that occurs more than five years after the termination of the client relationship, an LPC-Intern, or a student of the licensee at a post-secondary educational institution will not be deemed a violation of this section if the conduct is consensual, not the result of sexual exploitation, and not detrimental to the client. The licensee must demonstrate that there has been no exploitation in light of all relevant factors, including, but not limited to:

(A) - (G) (No change.)

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

(e) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person:

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

(9) making a request for a [tø] date;

(10) - (13) (No change.)

(f) (No change.)

(g) A licensee shall report sexual misconduct as follows.

(1) If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health [services] provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:

(A) (No change.)

(B) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health [services] provider; and

(C) (No change.)

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

§681.43. Testing.

(a) (No change.)

(b) A licensee shall not appropriate, reproduce, or modify copyrighted tests or any parts thereof without the acknowledgment and permission of the copyright owner.

(c) - (e) (No change.)

§681.44. Drug and Alcohol Use.

A licensee shall not:

(1) use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling [treatment intervention services];

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

§681.45. Confidentiality and Required Reporting.

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

(c) A licensee shall comply with Texas Health and Safety Code, Chapters 181 and 611 [Chapter 611], concerning access to mental health records and confidential information.

(d) A licensee shall report information if required by [any of] the following statutes:

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

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health [services] provider.

(5) (No change.)

(e) - (f) (No change.)

§681.46. *Licensees and the Board.*

(a) (No change.)

(b) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the board [board's executive director].

(c) - (f) (No change.)

(g) A licensee who files a complaint with the board in bad faith is [may be] subject to disciplinary action.

§681.47. *Assumed Names.*

(a) (No change.)

(b) An assumed or trade name used by a licensee shall [must] not be false, deceptive, or misleading, as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements).

§681.48. *Consumer Information.*

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter. [On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.]

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

(3) on a bill for counseling [treatment intervention] provided to a client.

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

(e) On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.

[~~(e) In addition to the requirements of subsection (a) of this section, an LPC Intern shall inform the client of the name, telephone number, and address of the intern's supervisor.~~]

§681.49. *Advertising and Announcements.*

(a) (No change.)

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any [material] misrepresentation of fact or omits a fact necessary to make the statement [as a whole not materially] misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a mental health care service or procedure;

(3) compares a mental health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) (No change.)

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a mental health care professional;

(6) - (8) (No change.)

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved for [to] or used by another profession or professional.

(c) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations [made].

(d) The highest academic degree earned from an accredited college or university in counseling or a counseling-related field as reported by the American Association of Collegiate Registrars and Admissions Officers may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(e) Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(f) [~~(e)~~] The board imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.

(g) [~~(f)~~] All advertisements or announcements of counseling [treatment intervention] including telephone directory listings by a person licensed by the board shall clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC" ["L.P.C."], or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

(h) [~~(g)~~] LPC Interns [~~Counselors~~] holding a temporary license shall indicate intern status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Intern." On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor[, along with the address and phone number] in the same type size and font.

(i) [~~(h)~~] A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." ["A.T."] A licensee who does not hold the designation may use [engage in the practice of counseling by using] art therapy as a counseling method but may not use the title or initials.

(j) [~~(i)~~] A licensed professional counselor who is a board-approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

§681.50. *Research and Publications.*

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

(d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to the person/persons [these persons] who have contributed significantly to the licensee's research or publication.

§681.51. *Finding of Misconduct Occurring before Licensure.*

(a) (No change.)

(b) The board may consider conduct prior to licensure in determining whether an applicant or licensee is qualified [fit] to practice counseling, including conduct that would have been a violation of the code of ethics if the person had been [was] licensed.

(c) The board may deny a license, license renewal, or specialty recognition if it substantiates that the applicant lacks the necessary skills and abilities to provide adequate counseling; has misrepresented any materials in the licensure application or renewal application, or any materials submitted to the board; has violated any provision of the Act in effect when the applicant applied; or has violated the code of ethics, or any other section of this chapter which would have applied had the applicant been licensed when he/she committed the violation.

(d) To determine the applicant's fitness, the board shall consider the applicant's skills and abilities to provide adequate counseling services to clients; the applicant's ethical behavior in relationships with other professionals and clients; and the applicant's worthiness of public trust and confidence.

§681.52. *LPC Interns.*

(a) An LPC Intern may practice only under the supervision of a Licensed Professional Counselor Supervisor and may not practice within the LPC Intern's own private independent practice of professional counseling.

(b) An LPC Intern may be employed by a Licensed Professional Counselor or by an entity that employs the Licensed Professional Counselor Intern on a salary basis or be a consultant or volunteer.

~~[(a) An LPC Intern may not practice within the Intern's own private independent practice of professional counseling.]~~

~~[(b) An LPC Intern may be employed on a salary basis or be a consultant or volunteer.]~~

(c) No payment for services will be made directly by a client to the LPC Intern [intern].

(d) Client records are not the property of the LPC Intern [counseling intern].

(e) All billing documents for services provided by an LPC Intern shall reflect that the LPC Intern holds a temporary license and is under supervision. On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the LPC Intern's [intern's] name shall be followed by the name of the supervisor in the same type size and font.

(f) - (g) (No change.)

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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§681.71 - 681.73

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.71. *General.*

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

(c) Applicants submitting complete application packets, but which contain incomplete or unacceptable information will be notified in writing of the specific deficiency [in writing]. A copy of each unacceptable document will be returned with the notice. Applicants will have 45 days from the date of the notice to resubmit corrected or replacement documents. Applications not corrected or completed within 45 days of notice of deficiencies will be void and application materials will be returned to the applicant.

(d) (No change.)

§681.72. *Required Application Materials.*

(a) A general application form shall include, but not be limited to:

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

(3) the applicant's permission to the board to seek any information it requires [deems fit] to determine the applicant's qualifications;

(4) - (6) (No change.)

(b) The practicum documentation form shall contain:

(1) (No change.)

(2) the name and address of the agency or organization where the practicum was completed [done];

(3) - (4) (No change.)

(5) the type of setting, the type [kinds] of clients seen, and the counseling methods practiced [employed];

(6) - (7) (No change.)

(c) The supervisor shall submit a supervisory agreement form completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.

(d) ~~[(e)]~~ The supervised experience documentation form must be completed by the applicant's supervisor and contain:

(1) the name of the applicant;

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;

(3) the name and address of the agency or organization where the experience was completed [gained];

(4) the inclusive dates of the supervised experience and the total number of hours of practice;

(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience, and the types of supervision used;

(6) the applicant's employment status during supervised experience;

(7) the types of clients seen and counseling methods used;

(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice; and

(9) a statement that the supervised experience complies with the rules set out in Subchapter F of this chapter (relating to Experience Requirements for ~~[Examination and]~~ Licensure) and §681.73 of this title (relating to Application for Art Therapy Specialty Designation).

~~[(d) The supervisor shall submit a supervisory agreement form completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.]~~

~~[(e) A supervisory agreement form must be submitted for subsequent supervisors and settings, before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board may not be counted toward licensure.]~~

~~(e) [(f)] Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s), either by mail or e-transcript, where the applicant obtained the course work or an official transcript may be attached to the application in a sealed envelope from the college or university.~~

~~(f) [(g)] An applicant must submit examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam along with proof of completion of the Texas Jurisprudence Exam. The National Counselor Exam must have been taken no more than five years prior to the date of application. If applying by reciprocity, the five year limit does not apply. The Texas Jurisprudence Exam must have been taken no more than two years prior to the date of application.~~

§681.73. Application for Art Therapy Specialty Designation.

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

(c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of Subchapter F of this chapter (relating to Experience Requirements for ~~[Examination and]~~ Licensure) and must have the following:

(1) 1,500 ~~[1,000]~~ client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(2) (No change.)

(d) (No change.)

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SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §§681.81 - 681.83

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.81. General.

(a) (No change.)

(b) Degrees and course work received at foreign universities shall be acceptable only if such course work would be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. Prior to submitting an application for licensure, the potential applicant shall provide the board with documents and evidence to establish that his/her formal education is equivalent to at least a master's degree as required by the License Professional Counselors Licensing Act and Rules and Regulations of the Board, granted by a United States university that is regionally accredited. Documentation must include:

(1) an original or certified copy of a diploma or other certificate of graduation;

(2) a transcript or comparable document of all course work completed; and

(3) a certified translation of all documents submitted in a language other than English.

(c) If degrees or course work cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or course work, the board may consider, on a case-by-case basis, accepting degrees or course work based on other evidence presented by the foreign graduate applicant.

(d) ~~[(e)]~~ The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means such as course syllabi.

(e) ~~[(f)]~~ The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(f) ~~[(g)]~~ The board shall accept no course work which an applicant's transcript indicates was not completed with a passing grade or for credit.

(g) ~~[(h)]~~ In evaluating transcripts, the board shall consider a quarter hour of academic credit as two thirds of a semester hour.

(h) A graduate degree and graduate coursework that was awarded or earned more than 10 years prior to the application date may not be used to fulfill the requirements for licensure unless the applicant has held a license issued by another state or has been counseling in Texas in an exempt setting for at least five years prior to the application date.

§681.82. *Academic Requirements.*

(a) Persons applying for licensure must have:

(1) (No change.)

(2) a planned graduate program in counseling or related field of at least 48 semester hours with 60 semester hours for applicants starting a counseling program as of August 1, 2017.

(b) The 48/60 [48] semester hours must be designed to train a person to provide direct services to assist individuals or groups in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(1) The 48/60 [48] semester hours may be course work that was part of the required graduate degree, or may be in addition to course work taken for the degree, or a combination of both.

(2) The 48/60 [48] hours must cover the course content described in §681.83 of this title (relating to Academic Course Content).

(c) Applicants must also have a supervised practicum experience that is primarily counseling in nature of at least 300 clock-hours which were a part of the required planned graduate program.

(1) At least 100 hours of the practicum must be direct client contact [direct client counseling contact must be shown].

(2) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(3) (No change.)

§681.83. *Academic Course Content.*

(a) An applicant must complete at least one three-semester hour course in each of the following areas:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through adulthood [old age];

(2) - (5) (No change.)

(6) research - the methods of research which may include the study of statistics or a thesis project [in an area relevant to the practice of professional counseling];

(7) - (10) (No change.)

(b) The remaining courses needed to meet the 48/60 [48] graduate-hour requirement shall be counseling or related course work that are in areas directly supporting the development of an applicant's professional counseling skills and shall be courses related primarily to professional counseling.

(c) As of August 1, 2017, the following courses to meet the 60-hour requirement may include:

(1) crisis counseling;

(2) addictions counseling; to include but not limited to gambling, sexual, eating, alcohol, or drug;

(3) additional course in counselor ethics; to include records management, business law and professional practice and the study of current board rule;

(4) additional course in abnormal human behavior to include such content as criteria of psychiatric diagnosis, use of the DSM Multi-Axial system and theories of psychopathology. Ability to recognize indicators of functional and organic disorders in clients. Basic knowledge of types of psychopharmacological medications; and

(5) couples, families, or parenting.

(d) Passing the National Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§681.91 - 681.93

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.91. *Temporary License.*

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

(d) An LPC Intern may have only one LPC board-approved supervisor on file at any given time.

(e) [(d)] An LPC Intern must maintain a temporary license during his or her supervised experience.

(f) [(e)] An LPC Intern [A temporary] license will expire 60 months from the date of issuance.

(g) [(f)] An LPC intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license, including examination requirements.

(h) Applicants who previously held licensure in Texas must reapply under requirements in place at the time of application.

[(g) Applicants who previously held licensure under the 2,000 hour rule and who need to complete the remaining 1,000 hours will be allowed to apply for a one year temporary license in order to accrue the hours. No extension of this license will be approved.]

~~[(h) An LPC Intern who holds a temporary license issued before September 1, 2005, may obtain a regular license by:]~~

~~[(1) submitting a supervised experience documentation form documenting successful completion of the required hours of supervised experience in accordance with §681.72(e) of this title (relating to Required Application Materials) and §681.92 of this title; and]~~

~~[(2) passing the National Counselor Exam (NCE).]~~

~~(i) (No change.)~~

~~(j) A person holding a temporary license will provide no direct counseling services unless acting under a supervisor agreement as stated in §681.93 of this title (relating to Supervisor Requirements). Supervision is complete upon the LPC Intern receiving the regular license. Supervision shall continue after completion of the 3,000 hour and until the LPC Intern receives their regular license.~~

~~(k) An LPC Intern must submit the change of supervision form into the board office for approval before commencing supervision at a new site or with a new supervisor. Without an approved supervision form on file with the board, supervised hours may not be counted toward licensure.~~

~~[(k) The supervisor must submit a supervisory agreement form, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.]~~

~~[(l) A supervisory agreement form must be submitted for subsequent supervisors and settings before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board for each supervisor and each site may not be counted toward licensure.]~~

~~(l) [(m)] An applicant coming from another state, who has earned post graduate supervised experience in another state, may submit either their application file from the other state showing their post graduate experience or have their experience documented on Texas [this state's] board forms.~~

§681.92. Experience Requirements (Internship).

~~(a) All applicants [Applicants] for licensure must complete a supervised experience acceptable to the board of 3,000 clock-hours.~~

~~(b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Experience hours earned via counseling by technological means of communication may count for no more than one hundred hours [+0%] of the total supervised experience hours. Only actual time spent counseling may be counted.~~

~~(c) An Intern may not [must] complete the required 3,000 clock-hours of supervised experience in a time period less [of no fewer] than 18 months.~~

~~(d) (No change.)~~

~~(e) The internship may only [must] commence after:~~

~~(1) (No change.)~~

~~(2) the completion of a planned graduate program in counseling of at least 48 semester hours with 60 semester hours as of August 1, 2017; and~~

~~(3) the completion of the examinations [if] required.~~

~~(f) The experience must consist [have consisted] primarily of the provision of direct counseling services within a professional relationship to individuals, families, couples, or groups by using a com-~~

bination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

~~(g) The LPC Intern must receive [have received] direct supervision consisting of a minimum [an average] of four hours per month of face to face [one hour a week of face-to-face] or live Internet webcam supervision in individual (up to two Interns) or group (three or more) settings for each week the intern is engaged in counseling. No more than 50% of the total hours of supervision can be live Internet webcam supervision and no more than 50% of the total hours of supervision may be received in group supervision. No more than 50% of the total hours of group supervision may be live Internet webcam supervision.~~

~~(h) Supervisors, during supervision, shall review board rules on an average of one hour for every ten hours spent in supervision and note such on logs.~~

~~(i) [(h)] The experience must have been under the supervision [direction] of a board approved supervisor.~~

~~(j) [(i)] The board may count excess practicum hours toward the experience requirements of this subchapter if:~~

~~(1) the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;~~

~~(2) the hours are in excess of the 300-hour practicum required by §681.82(c) of this title (relating to Academic Requirements); and~~

~~(3) no more than 400 hours can be counted for excess practicum.~~

~~[(3) the hours to be counted are not more than 400 hours.]~~

~~(k) [(j)] LPC Interns shall comply with the ethical standards set out in Subchapter C (relating to Code of Ethics) of this chapter.~~

~~(l) [(k)] Experience received under a supervisor who is a licensee subject to a board disciplinary order shall not qualify as supervised experience for licensure purposes.~~

~~(m) An LPC Intern must submit the change of supervision form into the board office for approval before commencing supervision at a new site or with a new supervisor. Without and approved supervision form on file with the board supervised hours may not be counted toward licensure.~~

~~(n) To upgrade from the LPC Intern status to full LPC, an LPC Intern must submit the supervised experience documentation form, proof of passing the Texas Jurisprudence exam within two years prior to upgrade and the upgrade fee if applicable.~~

§681.93. Supervisor Requirements.

~~(a) All internships physically occurring in the State of Texas [for which a supervisory agreement is received on or after September 1, 2003,] must be completed under the supervision of a board approved supervisor. [a supervisor who holds a regular license issued by the board.] The supervisor must have held the regular license in good standing for at least 36 [24] months from the date of issuance. [Completion of a doctoral degree in counseling or a counseling-related field at an accredited university may be substituted for 12 months of the 24 month requirement.]~~

~~(b) For all internships physically completed in a state or jurisdiction other than Texas, the supervisor must be a person licensed or certified by the state or jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise~~

the counseling services offered by the intern. [If the state or jurisdiction has no appropriate licensure or certification, the applicant must submit to the board relevant official graduate transcripts, documentation of practicum and experience, and any professional certifications which demonstrate that the person is qualified to supervise the type of counseling practice performed by the intern.]

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth in this subsection [below]; and shall submit a \$100 processing fee. Application for supervision status must be submitted within 2 years of completing the 40-hour supervision course or within 5 years of completing a doctoral level supervision course from an accredited university. [~~Licensees who are in an accredited doctorate program are exempt from the 2 year time limit.~~] The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a \$100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

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

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

(d) A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the approved site where the hours were accrued and the content of the supervision [session].

(e) The full professional responsibility for the counseling activities of an LPC Intern shall rest with the intern's board approved supervisor(s). If the LPC Intern receives disciplinary action by the board the supervisor may also be subject to disciplinary action.

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

(5) A supervisor shall [timely] submit accurate documentation of supervised experience to the board within 30 days of completion of hours.

(f) A supervisor whose license is expired, [~~expires or is~~] revoked or suspended is no longer an approved supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension may not count as acceptable hours [~~unless approved by the board~~].

(g) A supervisor who becomes [become] subject to a board disciplinary order is no longer an approved supervisor. The person shall immediately inform all LPC Interns under their supervision of the board disciplinary order and assist the LPC Interns in finding alternate supervision.

(h) - (l) (No change.)

(m) Supervisors who are in violation of board rules may be subject to an administrative penalty of up to \$5,000 per day depending on the level of severity.

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SUBCHAPTER G. LICENSURE EXAMINATIONS

22 TAC §§681.101 - 681.103

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.101. Examination.

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

[(f) As of September 1, 2005, LPC Interns who have not passed the Texas exam will be required to pass the National Counselor Exam prior to the expiration of the temporary license.]

§681.102. Notice of Results.

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

[(c) No matter which numerical or other scoring system is used in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail".]

§681.103. Reexamination.

(a) A person [An applicant] who fails the licensure examination may schedule a second examination no sooner than 90 days after the prior exam.

(b) A person who fails the exam twice will be required to either wait until two years have elapsed from the date of the last examination or until the person has completed nine graduate semester hours in the applicant's weakest portion of the examination. The hours must be counseling or counseling-related courses with a grade of "B" or better. Research and practicum courses will not be accepted as meeting the nine graduate semester hours.

[(b) The temporary license of persons who applied for licensure before September 1, 2005, and have failed any two successive examinations shall be voided. Reapplication for a temporary license must be in accordance with §681.72 of this title (relating to Required Application Materials) and §681.91(a)(5) of this title (relating to Temporary License). These individuals may not make application for a temporary license, provisional license, or reapply for a regular license until two years have elapsed from the date of the last examination or until the person has completed nine graduate semester hours in the applicant's weakest portion of the examination. The hours must be in counseling or counseling-related courses. After completion of the coursework or the elapsing of two years, a new application for licensure must be submitted in accordance with §681.81 of this title (relating to General) and §681.82 of the title (relating to Academic Requirements).]

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SUBCHAPTER H. LICENSING

22 TAC §§681.111 - 681.114

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments and new rule affect Texas Occupations Code, Chapter 503.

§681.111. Issuance of Licenses.

(a) (No change.)

(b) All ~~Regular and temporary~~ licenses shall bear the signature of the board chair.

~~[(e) Provisional licenses shall bear the signature of the executive director.]~~

(c) ~~[(d)]~~ Any license certificate or renewal card issued by the board remains the property of the board and must be surrendered to the board on demand.

(d) ~~[(e)]~~ The board will replace a lost, damaged, or destroyed license certificate or renewal cards upon a written request from the licensee and payment of the license replacement fee.

(e) ~~[(f)]~~ Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate for a second place of practice which is designated in a licensee's file.

(f) ~~[(g)]~~ Only the highest academic degree earned from an accredited college or university as reported by the American Association of Collegiate Registrars and Admissions Offices in counseling or a counseling-related field may appear on the license certificate.

§681.112. Provisional Licensing.

(a) The board may grant a provisional license to a person who holds, at the time of application, a license as a counselor ~~[or art therapist]~~ issued by another state, territory, or jurisdiction that is acceptable to the board. An applicant for a provisional license must:

(1) (No change.)

(2) be licensed in good standing as a counselor ~~[or art therapist]~~ in another state, territory, or jurisdiction that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act and submit documentation of such licensure including a letter of good standing and a copy of the licensure file from the other state, territory or jurisdiction or from the National Credentials Registry; and

(3) (No change.)

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

(d) If an applicant who applies for a provisional license meets the requirements of subsection (a) of this section and has engaged in the practice of mental health counseling on a full time basis for five years of the immediately preceding seven years prior to application for license the applicant may qualify for and be issued a regular license.

(e) ~~[(d)]~~ The board shall consider only states, territories, and jurisdictions of the United States as acceptable for the purposes of provisional licensing.

§681.113. Surrender of License.

(a) - (d) (No change.)

(e) A license which has been surrendered and accepted by the board may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

§681.114. Licensing of Military Spouses.

(a) This section sets out the alternative license procedure for military spouse required under Texas Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license as a professional counselor issued by another state that has substantially equivalent licensing requirements shall complete and submit an application form and fee. In accordance with Texas Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

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

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SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §§681.121, 681.123 - 681.127

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the

board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.121. *General.*

(a) (No change.)

(b) A licensee [person] who holds a regular license must have fulfilled any continuing education requirements prescribed by board rule in order to renew a license.

(c) - (f) (No change.)

§681.123. *License Renewal.*

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

(c) The board shall not renew a license until it receives the renewal fee and the completed board renewal form including criminal history information, changes of address, continuing education and other required information.

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

§681.124. *Late Renewal.*

(a) A person who renews a license after the expiration date but [on or] within 90 days after the expiration date shall pay the regular renewal fee plus the appropriate late penalty [renewal] fee.

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

(e) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applied for renewal. The person must pay to the board a fee that is equal to the amount of the license examination fee.

(f) [(e)] On or after one year from the expiration date, a person may no longer reinstate the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for licensure including passing all required examinations.

§681.125. *Inactive Status.*

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

(c) A person may not act as a professional counselor, represent himself or herself as a professional counselor, or provide counseling [treatment intervention] during the inactive status period, unless exempted by the Act.

(d) - (h) (No change.)

[(i) An LPC Intern's license shall not exceed 4 years on inactive status. Should the Intern fail to return to active status within 4 years, the license will be considered null and void and the person will be required to reapply for licensure under current rules.]

§681.126. *Retired Status.*

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

(c) A retired license cannot be renewed or reinstated. To [be eligible for a new license to] practice professional counseling, the person must apply for a new license by meeting requirements in effect at the time of the application, including passing all required examinations.

(d) (No change.)

§681.127. *Active Military.*

(a) (No change.)

(b) If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's designated representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the board prior to expiration of the license or within one year from the expiration date. A request for renewal may be made before or after the expiration date.

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

(6) If a licensee is a civilian impacted or displaced for business purposes outside of the State of Texas due to a national emergency or war, the licensee or the licensee's designated representative may request that the license be declared inactive in the same manner as described in this section for military personnel. The written request shall include an explanation of how the licensee is impacted or displaced, and [which explanation] shall be on the official letterhead of the licensee's business. The requirements of this section relating to renewal by active duty licensees shall not apply to a civilian under this paragraph.

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

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SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§681.141 - 681.146

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments and new rule affect Texas Occupations Code, Chapter 503.

§681.141. *General.*

(a) The purpose of this subchapter is to establish the continuing education requirements for the renewal of a regular license. These requirements are intended to maintain and improve the quality of professional counseling services provided to the public and maintain licensee knowledge of current research, techniques, and practice; and provide [other] resources which will improve skill and competence in professional counseling.

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

(e) A [Beginning January 1, 2007, a] licensee must successfully complete the Texas Jurisprudence Examination each renewal period.

(f) A licensee holding the supervisor status must complete an eight-hour refresher course in supervision every four years. [3 hours of continuing education directly related to supervision practices as part of the 24 hours of continuing education.]

§681.142. *Types of Acceptable Continuing Education.*

(a) Acceptable continuing education may include:

~~[(1) teaching or consultation in graduate level programs which are designed to increase professional knowledge related to the practice of professional counseling provided that such teaching and consultation is not part of, or required as a part of, one's employment;]~~

~~(1) [(2)] completion of graduate academic courses in areas supporting development of skill and competence in professional counseling at an accredited institution;~~

~~(2) [(3)] participation in case supervision, management, or consultation provided that it is not required as a part of a licensee's employment; is conducted according to stated training or didactic goals such as expertise in specific techniques including supervision techniques or certification in specialty areas of counseling; is conducted by an appropriately state-licensed, state-certified, or state-registered mental health professional who meets board requirements for supervisors, demonstrates training and expertise in the specific area for which supervision is provided, and has received prior approval by the board for the program; and does not exceed six months in length;~~

~~(3) [(4)] participation or teaching in programs directly related to counseling (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by an accredited college or university, a nationally recognized professional organization in the mental health field or its state or local equivalent organization, or a state or federal governmental agency;~~

~~(4) [(5)] completion of an independent study program directly related to counseling and approved or offered by a nationally recognized professional organization in the mental health field or its state equivalent, approved or offered by an accredited college or university, or approved or offered by a board approved continuing education provider; [and/or]~~

~~(5) [(6)] participation in programs directly related to counseling and are offered by persons approved by the board as continuing education providers; and/or[-]~~

~~(6) attendance at a complaints committee meeting of the board without being a respondent to or involved in a complaint. The hours obtained can be used for either ethics or supervision credit.~~

(b) (No change.)

§681.143. *Activities Unacceptable as Continuing Education.*

The board shall not give continuing education credit to a licensee for:

~~(1) education incidental to the regular professional activities of a counselor such as learning occurring from experience or research;~~

~~(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;~~

~~(3) meetings and activities not related to the practice of professional counseling that are required as a part of one's job;~~

~~(4) teaching or consultation that is part of one's employment; and~~

~~(5) an experience that does not fit the types of acceptable continuing education in §681.142 of this title (relating to Types of Acceptable Continuing Education).~~

§681.144. *Pre-Approved Providers.*

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

(f) Approved providers of continuing education must maintain records of all continuing education activities for a period of five years including names of all presenters, complete course descriptions and objectives, teaching methods, [employee] attendance sheets for each course, sample certificates of attendance, and evaluation documents from each participant for the specific experience. The provider shall provide each participant with written documentation of attendance, which includes the participant's name, the number of approved continuing education hours, the title and date(s) of the program, the provider number, and the signature of the provider.

(g) - (i) (No change.)

§681.145. *Determination of Clock-hour Credits.*

(a) Programs [Parts of programs] which meet the criteria of §681.142 of this title (relating to Types of Acceptable Continuing Education) shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(b) Teaching in programs as long as not part of employment, which meet the board's criteria as set out in §681.142 of this title shall be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour [actually] taught. No more than 9 hours of the 24 clock-hour continuing education requirement can be credited under this option. Credit may be granted for the same presentation only once during a two year period.

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

§681.146. *Reporting of Continuing Education.*

(a) The board will monitor a licensee's compliance with continuing education requirements by [the use of] random audit. Licensees will be notified in writing if they have been selected for a continuing education audit. Individual supporting documents of participation in continuing education activities are not to be submitted to the board unless a written Notice of Audit is received informing the licensee that he or she has been randomly selected for a document audit. Upon receipt of a Notice of Audit the licensee will be required to submit all appropriate documentation to substantiate compliance with the board's continuing education requirements within 15 working days of receipt of notice.

(b) - (e) (No change.)

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22 TAC §681.147

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Examiners of Professional Counselors or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The repeal affects Texas Occupations Code, Chapter 503.

§681.147. *Activities Unacceptable as Continuing Education.*

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SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §§681.161, 681.162, 681.164 - 681.172

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.161. *Complaint Procedures.*

(a) (No change.)

(b) A complaint shall not be accepted by the board office if it is not filed within five years of the date of termination of the counseling [counselor-client] relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §681.42 of this title (relating to Sexual Misconduct) or the board's previous rules relating to sexual activities.

(c) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant. The executive director may accept an anonymous complaint if [there is] sufficient information has been provided regarding the alleged violation to conduct an [for the] investigation.

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

(f) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director [Executive Director] may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the complaints committee.

(g) (No change.)

(h) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the complainant and licensee or person against whom the complaint has been filed [and the complainant].

(i) (No change.)

(j) If a written complaint is filed with the board which [that] the board has the authority to resolve, the board, periodically, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

§681.162. *Disciplinary Action; Notices.*

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

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice of the basis for the proposal and state that the licensee or applicant must request, in writing, a formal hearing within 15 working days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

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

§681.164. *Licensing of Persons with Criminal Convictions.*

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

(c) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny [to] a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude which are those crimes including but not limited to dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license. In considering whether a criminal conviction directly relates to the profession of counseling, the board shall consider but not limited to:

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

(d) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) - (6) (No change.)

(7) a misdemeanor and/or a felony offense under various titles of the Texas Penal Code:

(A) concerning Title 5 which relates to offenses against the person;

(B) concerning Title 7 which relates to offenses against property;

(C) concerning Title 8 which relates to offenses against public administration;

(D) concerning Title 9 which relates to offenses against public order and decency;

(E) concerning Title 10 which relates to offenses against public health, safety, and morals; and

(F) concerning Title 4 which relates to offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A) - (E) of this paragraph; or

(8) any other misdemeanor or felony directly relating [directly relating] to the duties and responsibilities of a licensee.

(e) (No change.)

§681.165. *Suspension, Emergency [Temporary] Suspension, Revocation, or Denial.*

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

(c) Upon the revocation, suspension or non-renewal of a license, a licensee shall return his or her license certificate and all existing renewal cards to the executive director [~~Executive Director~~].

(d) (No change.)

§681.166. *Informal Disposition.*

(a) - (d) (No change.)

(e) The notice shall inform the licensee or applicant of the nature of the alleged violation or the reason for application denial; that the licensee may be represented by legal counsel; that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate within time limits set by the executive director [~~Executive Director~~]; that the board's legal counsel shall be present; that the licensee's or applicant's attendance and participation is voluntary; and that the informal conference shall be canceled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend. A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the informal conference.

(f) - (v) (No change.)

§681.167. *Waiver of Right to Hearing.*

(a) Failure to respond to a notice from the board or if a licensee or applicant agrees with the action proposed in the notice, the board may enter an order taking disciplinary action or an order of application denial as described in the written notice to the licensee or applicant.

(b) (No change.)

§681.168. *Surrender of License when Complaint is Pending.*

(a) When a licensee has offered the surrender of his or her license after a complaint has been filed, alleging violations of the Act or this chapter, the board shall consider whether to accept the surrender of the license.

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

(d) Upon surrender of a license during the course of the investigation, the surrender is considered a final disciplinary action and may not be reinstated; however a person may apply for a new license in accordance with the Act and this chapter. [~~be considered for denial upon subsequent reapplication for license.~~]

§681.169. *Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order [License Suspension or Denial Relating to Child Support and Child Custody].*

(a) - (i) (No change.)

§681.170. *Monitoring of Licensees.*

(a) (No change.)

(b) A licensee that has had disciplinary action taken against his or her license shall [~~may be required to~~] submit regularly scheduled reports to the executive director if required by the board.

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

§681.171. *Assessment of Administrative Penalties.*

(a) (No change.)

(b) The amount of an administrative penalty shall be based on the following criteria.

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

(3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next highest [~~higher~~] severity level.

(4) (No change.)

§681.172. *Due Process Following Violation of an Order.*

(a) A licensee who is alleged to be in violation of a board disciplinary order shall be provided with the following due process. The department will send a Notice of Violation of the Order to the licensee. The Notice of Violation shall include:

(1) a brief statement of the acts or omissions believed to constitute a violation, including information sufficient to inform [~~apprise~~] the licensee about the date and nature of the violation;

(2) (No change.)

(3) a statement in **bold letters of at least 10 point font** [~~large bold type~~] that, if the licensee fails to respond, the disciplinary action described in the Order will be imposed, and further that additional disciplinary actions may be taken if the conduct constituting the violation of the Order also violates a board rule or statute: "FAILURE TO RESPOND. YOUR FAILURE TO RESPOND WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS IN THIS NOTICE OF VIOLATION WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE IMPOSED BY DEFAULT. ADDITIONAL DISCIPLINARY ACTIONS MAY BE TAKEN."

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

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SUBCHAPTER L. FORMAL HEARINGS

22 TAC §§681.181, 681.182, 681.184

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.181. *Purpose.*

This subchapter covers [~~These rules cover~~] the hearing practices and procedures [~~procedures and practices~~] that are available to persons or parties who request formal hearings. The intended effect of this subchapter [~~these rules~~] is to supplement the contested case provisions of the Government Code, Chapter 2001, Administrative Procedure Act

(APA) and the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003).

§681.182. *Formal Hearing Procedures.*

(a) (No change.)

(b) Remedies available upon default. The Administrative Law Judge (ALJ) may [shall] proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Administrative Procedure Act (APA), Government Code, Chapter 2001. The ALJ may [shall] grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the commissioner.

(c) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof, if it is established [upon the offer of proof] that proper notice was provided to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure.

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

§681.184. *Action After the Hearing.*

(a) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statutes [statute] and shall be filed with the board.

(b) Appeals. All appeals from final board orders or decisions shall be governed by the APA or other pertinent statutes [statute] and shall be addressed to the board.

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SUBCHAPTER M. SCHEDULE OF SANCTIONS

22 TAC §§681.201 - 681.204

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.201. *General.*

This schedule of sanctions is adopted as required by the Act, §503.402. The schedule is intended to be utilized by the complaints committee as

a guide in assessing sanctions for violations of the Act or this chapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the board pursuant to the Texas Government Code, §2001.058(c). The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to the Texas Government Code, §2001.058(e). This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter. Rather [Instead], it should be used as a tool in that effort.

§681.202. *Relevant Factors.*

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints committee or the administrative law judge. Specific factors are to be considered as set forth in paragraphs (1) - (5) of this section [as follows].

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

§681.203. *Severity Levels and Sanction Guide.*

The following severity levels and sanction guides are based on the relevant factors in §681.202 of this title (relating to Relevant Factors).

(1) (No change.)

(2) Level Two - extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three - moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) - (5) (No change.)

§681.204. *Other Actions.*

The complaints committee or executive director, as appropriate, may also resolve pending complaints by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The complaints committee or executive director, as appropriate, may also issue informal reminders to licensees regarding compliance with minor licensing matters. The licensee is not entitled to a hearing on the matters set forth in formal advisory letters or informal reminders [a formal advisory letter or informal reminder], but may submit a written response to be included with such letters in the licensing record.

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SUBCHAPTER N. PARENTING
COORDINATION AND PARENTING
FACILITATION

22 TAC §681.251, §681.252

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.251. *Parenting [Parent] Coordination.*

(a) (No change.)

(b) A licensee₂ who serves as a parenting [parent] coordinator, is not acting under the authority of a license issued by the board and is not engaged in the practice of professional counseling. The services provided by the licensee who serves as a parenting [parent] coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee₂ who serves as a parenting [parent] coordinator, has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) (No change.)

(e) A licensee shall not provide professional counseling services to any person while simultaneously providing parenting [parent] coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§681.252. *Parenting [Parent] Facilitation.*

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

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting [parent] facilitators shall comply with all applicable requirements of the Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Family Code, Chapter 153, or this section.

(d) (No change.)

(e) In accordance with Family Code, §153.6101(b)(1), a licensed professional counselor intern shall not serve as a parenting [parent] facilitator.

(f) - (h) (No change.)

(i) A licensee, serving as a parenting [parent] facilitator, shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting [parent] facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting [parent] facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(j) - (x) (No change.)

(y) Records of a licensee₂ serving as a parenting facilitator, are not mental health records and are not subject to the disclosure requirements of Health and Safety Code, Chapter 611. At a minimum, records

shall be maintained for the period of time described in §681.41(q) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.

(z) - (gg) (No change.)

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TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 13. HEALTH PLANNING AND
RESOURCE DEVELOPMENT**

**SUBCHAPTER A. RECRUITMENT OF
PHYSICIANS TO UNDERSERVED AREAS**

25 TAC §§13.1 - 13.3

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§13.1 - 13.3, concerning physician visa waivers.

BACKGROUND AND PURPOSE

Federal law (Title 8 United States Code §1182 and §1184) allows waiver of normal immigration requirements for foreign physicians who agree to provide certain specified types of medical services in the United States. The United State Citizenship and Immigration Services provide these waivers based upon the recommendation of state health departments. This is called the "physician visa waiver" or "Conrad 30" program after the original name of the sponsor of the federal legislation and the number of exemptions provided to each state. Corresponding state law (Health and Safety Code, §12.0127) allows the department to implement the Texas Conrad 30 program in Texas. The purpose of the program is to recruit physicians to underserved areas of the state by making a recommendation for the waiver of the two-year home residence requirement for foreign physicians who trained in the United States on a "J-1 Exchange Visitor Visa." The waiver recommendation comes with a three-year service obligation for the physician to practice in an underserved area. The program is authorized by the federal government to make 30 waiver recommendations per year.

The amendment to §13.1 is necessary because the program no longer utilizes the "Flex" provision, allowing for state health departments to make visa waiver recommendation to areas that are not designated as having a shortage of physicians.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that

agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 13.1 - 13.3 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §13.1 eliminates the priorities the program would consider if the "Flex" provision was utilized. The amendments to §13.2 and §13.3 make minor revisions for clarity.

FISCAL NOTE

Connie Berry, Manager, Primary Care Office, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed. The proposed rules do not change current program structure. The amendments are intended to update and streamline the rules, and are not anticipated to be controversial or have significant impact to the department or local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Berry has determined that the amendments to the Texas Conrad/State 30 J-1 visa waiver program rule will have no effect on small and micro-businesses participating in the program. Program review of past applicants indicates that 93% of applications employers are large health care organizations. These large health care organizations anticipate employing the physicians accepted under the Texas Conrad/State 30 J-1 Visa waiver program. Per Government Code, §2006.001, these organizations are too large to be considered small businesses (fewer than 100 employees or less than \$6 million in annual gross receipts) or micro-businesses (under 20 employees). The remaining 7% are individual physicians who would typically qualify as micro-businesses. Per program review, none of these applicants would qualify as small businesses; although, if a small business applies, the impact would be similar to that of a micro-business. The calculation of the economic impact is that this will result in approximately 2 micro-businesses annually paying \$500 to \$3,000 per application.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The amendments do not change current program structure, and the application fee will remain the same. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Berry has determined that for each year of the first five years the sections are in effect, the anticipated public benefit of enforcing and administering the amendments are the recruitment of physicians to the neediest of eligible underserved locations.

REGULATORY ANALYSIS

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

sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Connie Berry, Primary Care Office, Mail Code 1937, Family and Community Health Services Division, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-7518 or by email to Connie.Berry@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §12.0127, which allows the department to charge fees to cover the costs incurred by the Conrad 30 program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531.

§13.1. *Priorities for Waiver Recommendations.*

(a) (No change.)

(b) The following criteria will be applied in prioritizing applications for waiver recommendations:

{(1) regular applications may be considered and approved before some or all flexible applications are considered;}

{(2) some flexible applications may be approved based on considerations of the date the application is received by the department;}

{(3) flexible applications may be considered only if there are less than 30 regular applications;}

{(4) the number of flexible applications approved will be limited to no more than the number allowed by federal or state law but may be less than the number allowed by federal law;}

(1) [(5)] the needs of medically underserved areas will always be of importance in establishing the department's priorities; and

(2) [(6)] the department will operate the program to conform to federal law as it may be amended.

§13.2. *Application Fee.*

The department shall collect a fee of \$2,500 [\$2500] to \$5,000 [\$5000] from each applicant who is granted a waiver of the two-year home residency requirement from the Bureau of Citizenship and Immigration Services. The Texas Conrad 30 program shall [has the option to] assess the fee each year based on the cost of operating the program. The amount of the application fee will be identified on the Texas Conrad 30 program website at <http://www.dshs.state.tx.us/chpr/j1info.shtm> by May 1 of each year. The fee shall be submitted to the department at the time of application. Part of the fees may be returned under the following circumstances:

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

§13.3. *Other Federal or State Requirements.*

All waiver request applications must meet the requirements of federal law [laws] Title 8, United States Code, §1184, and relevant provisions in Health and Safety Code, Chapter 12.

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 July 1, 2013.

TRD-201302748

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 11, 2013

For further information, please call: (512) 776-6972



CHAPTER 289. RADIATION CONTROL SUBCHAPTER E. REGISTRATION REGULATIONS

The Executive Commissioner of Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §289.226 and new §289.226, concerning the registration of radiation machine use and services.

BACKGROUND AND PURPOSE

This proposal undertakes to correct rule citation references; update terminology to be consistent with current technology; update form names and names of professional boards; clarify that radiation machines used in veterinary medicine are required to have equipment performance evaluations performed; clarify language to differentiate between physician and certified physician; clarify that an entity under the jurisdiction of the federal government is not held to the requirements of this section; add transmission microscopes to the exemption section; and clarify that lasers, laser services, laser hair removal facilities, laser hair removal training programs, and laser hair removal individuals are required to submit separate applications for registration.

The proposal will permit therapeutic radiation machines operating at or above 1 MeV to be energized for purposes of installation and acceptance testing before receiving a certificate of registration; add requirements to apply for and receive a registration for electronic brachytherapy devices; require healing arts screening programs to determine a method for patients to select a physician for follow-up for those who do not have a physician; update the minimum education and training requirements for persons performing radiation machine assembly, installation or re-

pair; and clarify that linear accelerators and healing arts screening procedures shall be registered prior to human use.

In addition, the proposal will clarify that a person providing radiation machine services shall ensure that the person transferring, or having a radiation machine installed, shall have evidence of a completed application for registration or be in possession of a current certificate of registration; require the registrant to notify the department within 30 days of a new use location to be added to the certificate of registration; require providers of radiation machines to maintain a log of machines provided; and prohibit demonstration of radiation machines on humans unless by or under the direction of a practitioner.

The proposal will require the radiation safety officer to review operating and safety procedures at intervals not to exceed 12 months; require an equipment performance evaluation to be performed on radiation machines within 30 days of installation or re-installation; clarify the duties of the physicist when supervising a non-physicist that collects entrance exposure data; allow the option for the request for termination of the certificate of registration to be signed by the radiation safety officer, owner, or an individual authorized to act on behalf of the registrant; require research using radiation machines on humans to be approved by an Investigational Review Board; extend the interval for reciprocity requests from 1 year to 2 years; and add language to require the retention of records for training and experience of service providers to until termination of registration or 5 years after the individual terminates employment.

In addition, this rule proposal satisfies the four-year review of agency rules in Government Code, §2001.039, which requires that each state agency review every four years its rules and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.226 has been reviewed in its entirety and the department has determined that the reasons for adopting new §289.226 continue to exist.

SECTION-BY-SECTION SUMMARY

Throughout new §289.226 minor grammatical and typographical corrections are made, technical terminology is updated, rule reference citations are corrected and/or updated; and rule text extensively reorganized. In addition, form names and names of professional boards are updated.

Concerning §289.226(b)(11)(G), the phrase "and on machines used in veterinary medicine" is added to clarify that radiation services include completion of equipment performance evaluations on veterinary radiation machines.

Section 289.226(b)(14) and (15) add clarifying language to differentiate between the definition of a "physician" and a "certified physician" for purposes of the rule.

Section 289.226(b)(16) adds language to clarify that an entity under the jurisdiction of the federal government is not held to the requirements of this section.

In reference to §289.226(d)(5), the term "transmission microscopes" is added to include that they are exempt from the requirements of this section.

Concerning §289.226(e)(5), language is added to clarify that a separate application is required for lasers, laser services, laser hair removal facilities, laser hair removal training programs, and laser hair removal individuals.

In reference to §289.226(f)(1)(B), language is added to permit a person to energize an accelerator for purposes of installation and acceptance testing before receiving a certificate of registration.

Because brachytherapy devices are a new radiation therapy technology that is now regulated, §289.226(f)(6) adds requirements for each person having the device to apply for and receive a certificate of registration from the department before using the device on humans.

Wording in §289.226(h)(2)(H)(i) adds requirements for persons performing healing arts screening to establish a method for patients to ensure proper follow-up care if the screening reveals a condition requiring treatment to select a physician if the patient does not already have one to ensure proper follow-up care if the screening reveals a condition requiring treatment.

In §289.226(j)(5)(A)(iii)(I) - (III), a combination of training and experience is added for those with less formal training, but have additional years of supervised experience, to meet registration compliance requirements for the assembly, installation, and repair of radiation machines.

Section 289.226(m)(3) adds language to clarify that registration of the radiation machines is required prior to use.

Wording is added in §289.226(m)(6) to clarify that a person providing radiation machine services shall ensure that the person transferring, or having a radiation machine installed, shall have evidence of a completed application for registration or be in possession of a current certificate of registration.

Section 289.226(m)(7)(A)(iii) adds language to require that the person notify the department within 30 days if a radiation machine is installed at another use location so the department may document the site of the radiation machine and update the certificate of registration accordingly.

Concerning §289.226(m)(12)(B)(i) - (iii), language is added to require that the provider of radiation machines maintain a log of each machine provided to include the date, and name and registration number of the customer.

For health and safety purposes, §289.226(m)(13)(C) adds a requirement that explicitly prohibits demonstration of radiation machines on humans unless performed by or under the direction of a practitioner of the healing arts.

Section 289.226(n)(1)(A) adds language to require that the radiation safety officer review the operating and safety procedures at intervals not to exceed 12 months to ensure the procedures are current and compliant with rule.

For operator and patient safety, new language is added in §289.226(o)(5) to clarify that an equipment performance evaluation shall be performed on all radiation machines within 30 days of installation, re-installation, or after the repair of a component that might affect the radiation output.

Section 289.226(o)(7)(A) - (B) adds language to clarify the duties of the physicist when supervising a non-physicist in connection with the collection of entrance exposure data.

Section 289.226(q)(1)(A) adds language to permit the registrant's radiation safety officer, owner, or an individual authorized to act on behalf of the registrant, to sign a request for termination of the certificate of registration.

Language is added in §289.226(t)(7) to extend from 1 year to 2 years from the date granted, the reciprocal recognition of a registration from another jurisdiction.

Section 289.226(u) adds language to require that any research using radiation machines on humans is to be approved by an Investigational Review Board to comply with Title 45, Code of Federal Regulations (CFR), Part 46 and Title 21, CFR, Part 56.

The retention period for records of training and experience for the figure referenced in §289.226(v)(1) item (A) is extended to, "until termination of registration or 5 years after the individual terminates employment with the facility," so that pertinent records will be available at the time of inspection by the department.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson also has determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This is determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering these sections is to ensure continued, enhanced protection of the public, patients, workers, and the environment from unnecessary exposure to radiation by ensuring that the rule is clear and specific.

REGULATORY ANALYSIS

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

TAKING IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy/Standards Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347,

(512) 834-6770, extension 2010, or by email to Barbara.J.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Barbara J. Taylor at (512) 834-6770, extension 2010, or Barbara.J.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §289.226

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

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The repeal affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.226. *Registration of Radiation Machine Use and Services.*

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 July 1, 2013.

TRD-201302746

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 11, 2013

For further information, please call: (512) 776-6972



25 TAC §289.226

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code,

§1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The new rule affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.226. *Registration of Radiation Machine Use and Services.*

(a) Purpose.

(1) This section provides for the registration of persons using radiation machines and persons who are in the business of providing radiation machine services.

(2) A person who receives, possesses, uses, owns, or acquires radiation machines prior to receiving a certificate of registration is subject to the requirements of this chapter.

(b) Scope.

(1) In addition to the requirements of this section, all registrants are subject to the requirements of §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(2) Registrants using radiation machines in the healing arts are also subject to the requirements of §289.227 of this title (relating to Use of Radiation Machines in the Healing Arts). Morgues, educational facilities, and forensic medicine or investigations utilizing radiation machines for non-human use are subject to the specific requirements of §289.227 of this title.

(3) Registrants using analytical and other industrial radiation machines, such as x-ray equipment used for cathodoluminescence, ion implantation, gauging, or electron beam welding, are subject to the requirements of §289.228 of this title (relating to Radiation Safety Requirements for Industrial Radiation Machines).

(4) Registrants using accelerators, therapeutic radiation machines, simulators, and electronic brachytherapy devices are also subject to the requirements of §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices).

(5) Registrants using mammography radiation machines are also subject to the requirements of §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography) and §289.234 of this title (relating to Mammography Accreditation).

(6) Registrants using radiation machines in industrial radiographic operations are also subject to the requirements of §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(7) Registrants using dental radiation machines are subject to the requirements of §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines).

(8) Registrants using radiation machines in veterinary medicine are subject to the requirements of §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine).

(9) Registrants using laser radiation machines or performing laser services are subject to the requirements of §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices) or the requirements of §289.302 of this title (relating to Registration and Radiation Safety Requirements for Use of Laser Hair Removal Devices).

(10) To determine compliance with the requirements in this chapter for radiation machines used on humans, all radiation exposure rate (air kerma rate) or dose measurements for fluoroscopy or computed tomography radiation machines shall be performed by a licensed physicist with a specialty in diagnostic medical physics.

(11) For purposes of this section, radiation services include but are not limited to:

(A) radiation machines that are not for human use, performance of exposure rate (air kerma rate) or dose measurements;

(B) radiation machines for human use, collecting entrance exposure (air kerma) data for general radiographic and special purpose radiation machines, as defined in §289.227(e) of this title, by or under the supervision of a licensed medical physicist;

(C) radiation machines for human use, performance of services specified in paragraph (10) of this subsection or services requiring a licensed medical physicist as specified in §289.227(e) and §289.229 of this title;

(D) presentation of agency-accepted training courses that are specifically required by this chapter;

(E) demonstration and sale of radiation machines that require the individual to operate or cause a radiation machine to be operated in order to demonstrate or sell;

(F) assembly, installation or repair to ensure a radiation machine is operating according to manufacturer's specifications;

(G) completion of equipment performance evaluations (EPE) on dental radiation machines and on machines used in veterinary medicine; and

(H) providing radiation machines to a facility for limited time periods.

(12) For purposes of this section, a person providing the services described in paragraph (11)(H) of this subsection is a provider of equipment.

(13) For purposes of this section, a practitioner of the healing arts is a person licensed to practice healing arts by either the Texas Medical Board as a physician, the Texas Board of Chiropractic Examiners, or the Texas State Board of Podiatric Medical Examiners.

(14) For purposes of this section, a physician is an individual licensed by the Texas Medical Board.

(15) For purposes of this section, a certified physician is a physician licensed by the Texas Medical Board and certified in radiation oncology or therapeutic radiology.

(16) This section does not apply to an entity under the jurisdiction of the federal government.

(c) Prohibitions.

(1) No person shall expose an individual to radiation for training, demonstration, or other non-healing arts purposes.

(2) No person shall use radiation machines or perform radiation machine services except as authorized in a certificate of registration issued by the agency in accordance with the requirements of this section.

(d) Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this section, provided that the dose equivalent rate averaged over an area of 10 square centimeters (cm²) does not exceed 0.5 millirem per hour (mrem/hr) (0.005 mSv per hour (mSv/hr)) at 5 centimeters (cm) from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(2) Radiation machines in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of radiation machines for mobile services.

(3) Facilities that have placed all radiation machines in storage, including on-site storage secured from unauthorized use or removal, and have notified the agency in writing, are exempt from the requirements of this section. This exemption is void if any radiation machine is energized resulting in the production of radiation. Prior to resuming use of the machine(s) for human use, the machine shall meet all requirements of this section.

(4) Inoperable radiation machines are exempt from the requirements of this section. For the purposes of this section, an inoperable radiation machine means a radiation machine that cannot be energized when connected to a power supply without repair or modification.

(5) Domestic television receivers, video display terminals, transmission microscopes, and electron microscopes, including the servicing of such devices, are exempt from the requirements of this section.

(6) A person that takes possession of a radiation machine as the result of foreclosure, bankruptcy, or other default of payment may possess the machine without registering it. If the machine is energized, it shall be under the supervision of a person registered in accordance with this section and shall be energized only to demonstrate that the machine is operable for sale, lease, or transfer purposes.

(7) Facilities, including academic institutions and research or development facilities, registered for the use of radiation machines are exempt from the registration requirements of subsection (j) of this section, regarding radiation services, to the extent that their personnel perform radiation services only for the registrant by whom they are employed.

(e) General requirements for application for registration.

(1) Application for registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions. For initial registrations with multiple use locations, a separate application RC Form 226-2 shall be completed for each use location under the registration.

(2) A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The RSO shall meet the applicable qualifications specified in paragraph (3) of this subsection and carry out the responsibilities of subsection (n) of this section.

(3) Qualifications for RSOs for registrants (except for industrial radiography).

(A) All RSOs and laser safety officers shall meet the following general qualifications in addition to qualifications in specific categories:

(A) All RSOs and laser safety officers shall meet the following general qualifications in addition to qualifications in specific categories:

(i) knowledge of potential radiation hazards and emergency precautions; and

(ii) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(iii) experience in the use and familiarity of the type of equipment used.

(B) Specific qualifications for RSOs by facility are as follows.

(i) Healing arts facilities shall have:

(I) a practitioner RSO with documentation of licensing board number; or

(II) a non-practitioner RSO with at least one of the following:

(-a-) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least 2 years of supervised experience and/or supervised use of radiation machines;

(-b-) evidence of a valid limited certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least 4 years of supervised experience and/or supervised use of radiation machines;

(-c-) evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least 2 years of supervised experience and/or supervised use of radiation machines;

(-d-) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least 2 years of supervised experience and/or supervised use of radiation machines;

(-e-) evidence of registration with the Texas Board of Nursing as a Registered Nurse or a Registered Nurse with an extended scope of practice (Nurse Practitioner) performing radiologic procedures, and at least 2 years of supervised experience and/or supervised use of radiation machines in the respective specialty;

(-f-) evidence of registration with the Texas Physician Assistant Board, and at least 2 years of supervised use of radiation machines in the respective specialty;

(-g-) for radiation therapy facilities, evidence of registry by the ARRT or ARCRT and at least 4 years of supervised experience and/or supervised use of radiation therapy machines;

(-h-) evidence of bachelor's (or higher) degree in radiologic technology, health physics, or nuclear technology and at least 2 years of supervised experience and/or supervised use of radiation machines; or

(-i-) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in one or more of the following appropriate specialties:

(-1-) medical health physics, diagnostic medical physics, or nuclear medical physics for diagnostic x-ray facilities; or

(-2-) medical health physics or therapeutic medical physics for radiation therapy facilities.

(ii) Academic institutions and/or research and development facilities shall have RSOs who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. This individual may also serve as the RSO over the healing arts section of the facility.

(iii) Industrial radiography operations shall have a RSO who meets the requirements of §289.255(e)(4)(B) of this title.

(C) The RSO identified on a certificate of registration issued before September 1, 1993, need not comply with the training requirements in this subsection.

(D) The RSO for an application for registration of an electronic brachytherapy device shall meet the qualifications of this subsection and shall carry out the responsibilities of subsection (n) of this section.

(4) Any time after the filing of the original application, the agency may require additional information to determine if the certificate of registration should be issued or denied.

(5) An application for a certificate of registration may include a request for a certificate of registration authorizing one or more activities or use locations. Applications for certification of mammography systems, lasers, laser services, laser hair removal facilities, laser hair removal training programs, and laser hair removal individuals shall be made separately.

(6) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with §289.231(aa) of this title.

(7) Each application for a certificate of registration shall be accompanied by the fee prescribed in §289.204 of this title. An application for a certificate of registration for an electronic brachytherapy device shall be accompanied by the fee prescribed in Figure: 25 TAC §289.204(j), category (3) for other therapeutic radiation machines.

(8) Each application shall be accompanied by a completed RC Form 226-1 (Business Information Form) that shall contain the legal name of the entity or business. Unless exempt in accordance with the Business and Commerce Code, Chapter 71, the applicant shall:

(A) be authorized to conduct business in the State of Texas as listed on the Texas Secretary of State (SOS) web site; and

(B) file an assumed name certificate with the Texas SOS if using an assumed name in their application, and/or the office of the county clerk in the county where the business is located.

(f) Application for registration for human use of radiation machines.

(1) In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(A) Each person having a radiation machine used in the healing arts shall apply for registration with the agency within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered in accordance with subsection (g) of this section, and healing arts screening that shall be approved in accordance with subsection (h) of this section.

(B) Each person having an accelerator or therapeutic radiation machine capable of operating at or above 1 million electron volts (MeV) shall apply for and receive a certificate of registration from the agency before using the accelerator for human use. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the agency.

(C) Each person having a simulator and/or therapeutic radiation machine capable of operating below 1 MeV for human use shall apply for registration with the agency within 30 days of energizing the equipment.

(2) The applicant shall ensure that radiation machines are operated by individuals qualified by reason of training and experience to use the radiation machine for the purpose requested in accordance with this section in such a manner as to minimize danger to occupational and public health and safety.

(3) An application for healing arts shall be signed by a licensed practitioner. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed practitioner's signature if the facility has more than one licensed practitioner who may direct the operation of radiation machines. The application shall also be signed by the RSO.

(4) An application for accelerators or therapeutic radiation machines, including electronic brachytherapy devices, for human use shall be signed by a physician licensed by the Texas Medical Board. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a physician's signature if the facility has more than one physician who may direct the operation of radiation machines. The application shall also be signed by the RSO.

(5) Each applicant for accelerators or therapeutic radiation machines, other than electronic brachytherapy devices, shall submit:

(A) operating and safety procedures as described in §289.229(h)(1)(G) of this title; and

(B) a description of the proposed facilities.

(6) Each person having an electronic brachytherapy device shall apply for and receive a certificate of registration from the agency before using the device for human use. An application for an electronic brachytherapy device shall include:

(A) a list identifying the radiation safety officer, all certified physicians (except visiting certified physicians), licensed medical physicists, and qualified operators, with documentation of training and education in accordance with §289.229(h)(1)(D) and (E) of this title;

(B) a current copy of the quality assurance program in accordance with §289.229(h)(1)(F) of this title;

(C) a copy of the most current record of surveys, calculations, and quality assurance checks on each device;

(D) a copy of the device manufacturer's United States Food and Drug Administration certification;

(E) a copy of the operating and safety procedures as described in §289.229(h)(1)(G) of this title; and

(F) a description of the proposed facilities showing how the requirements of §289.229(k) of this title are to be met. The description of the proposed facilities shall also include:

(i) a diagram of the physical facility showing the location of the electronic brachytherapy treatment rooms;

(ii) an indication whether the facility is a new structure or a modification to an existing structure; and

(iii) the type and thickness of the portable shielding if used and a procedure demonstrating the use of the shielding prior to treatment.

(7) A separate registration is required for facilities for which one or more of the following applies:

(A) the facilities are not at the same physical address;

(B) the facilities are not under the same radiation safety program; or

(C) the facilities are not under the same management.

(g) Application for registration of mobile service operations.

(1) In addition to the requirements of subsections (e) and (f) of this section or §289.230 of this title, as applicable, each applicant shall apply for and receive authorization from the agency before beginning mobile service operations.

(2) The following shall be submitted:

(A) an established main location where the machine(s), records, etc. will be maintained for inspection. This shall be a street address, not a post office box number;

(B) a sketch or description of the normal configuration of each radiation machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed machine inside, furnish the floor plan indicating protective shielding and the operator's position; and

(C) a current copy of the applicant's operating and safety procedures regarding radiological practices for protection of patients, operators, employees, and the general public.

(h) Application for registration of healing arts screening.

(1) In addition to the requirements of subsections (e) and (f) of this section, each applicant shall apply for and receive authorization for healing arts screening before initiating a screening program.

(2) Persons requesting approval from the agency for healing arts screening programs shall submit:

(A) name and address of the applicant;

(B) diseases or conditions for which the x-ray examinations are to be used in diagnoses;

(C) a detailed description of the x-ray examinations proposed in the screening program;

(D) a description of the population to be examined in the screening program, for example, age, sex, physical condition, and other appropriate information;

(E) for mobile screening operations, location(s) where radiation machines are maintained;

(F) operating and safety procedures as follows:

(i) for all radiation machines (except bone densitometers) to include:

(I) an evaluation of the radiation machines to be used in the screening program;

(II) documentation that the evaluation was performed by a licensed medical physicist with a specialty in diagnostic medical physics;

(III) the evaluation shall show that the machines satisfy all requirements of this chapter;

(ii) for bone densitometers, the manufacturer's evaluation of the radiation machine(s) to be used in the screening program;

(G) training data to include:

(i) the qualifications of each individual who will be operating the radiation machine(s);

(ii) the name and address of the physician licensed in Texas who will interpret the radiographs; and

(H) documentation for verification of the following procedures:

(i) a method of recommending a means of selecting a physician for patients who do not have a physician;

(ii) a description of the procedures to be used in advising the individuals screened and their practitioners of the results of the screening procedure and any further medical needs indicated; and

(iii) a description of the procedures for the retention or disposition of the radiographs and other records pertaining to the x-ray examinations.

(i) Application for registration of radiation machines for non-human use, including use in morgues, forensic medicine or investigations, and educational facilities.

(1) In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(A) Each person having an accelerator for non-human use shall apply for and receive a certificate of registration from the agency before beginning use of the accelerator. A person may energize the accelerator for purposes of installation and testing before receiving a certificate of registration from the agency.

(B) Each person having an accelerator for non-human use shall submit:

(i) operating and safety procedures as described in §289.229(f)(3)(B) of this title; and

(ii) a description of the applicant's proposed facilities in accordance with §289.229(f)(2) and (f)(3)(A), (D) and (E) of this title.

(2) Each person having a radiation machine for non-human use, other than those specified in paragraph (1)(A) of this subsection and those used for industrial radiographic operations, shall apply for registration with the agency within 30 days after beginning use of the machine.

(3) Each applicant for use of radiation machines in industrial radiographic operations shall submit the information required in §289.255(t)(1) of this title before beginning use of the machine(s).

(4) An application for the uses specified in this subsection shall be signed by the applicant, registrant, or a person duly authorized to act for and on the applicant's or registrant's behalf. The application shall also be signed by the RSO.

(j) Application for registration of radiation machine services.

(1) In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(A) Each person who intends to provide radiation services described in subsection (b)(11) of this section shall apply for and receive a certificate of registration from the agency before providing the service.

(B) An application for radiation services shall be signed by the applicant or registrant or a person duly authorized to act for and on the applicant's or registrant's behalf. The application shall also be signed by the RSO.

(2) The applicant shall document the qualifications of the specific training and experience that qualifies each individual to perform the service as follows:

(A) for individuals performing assembly, installation, or repair of radiation machines in subsection (b)(11)(F) of this section, document the qualifications listed in paragraph (5) of this subsection;

(B) for individuals performing the services specified in subsection (b)(10) and (11)(C) of this section, obtain a copy of the individual's license from the Texas Board of Licensure for Professional Medical Physicists; and

(C) for all other services, document the qualifications listed in paragraph (5) of this subsection.

(3) No person shall provide services specified in subsection (b)(10) and (11) of this section that are not specifically authorized by the agency.

(4) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the agency except for:

(A) services specified in subsection (b)(11)(B), (C) and (E) of this section; or

(B) the initial installation of the first machine(s) for a new certificate of registration.

(5) Minimum education and training for persons performing radiation machine assembly, installation or repair.

(A) All persons performing radiation machine assembly, installation or repair shall meet one of the following requirements:

(i) 1 year of formal training (may be satisfied by factory school, military technical training school, or other courses in radiation machine assembly, installation or repair techniques) or an associate's degree in biomedical equipment repair;

(ii) a bachelor's degree in electrical engineering with specialized training in radiation producing devices; or

(iii) a combination of training and experience totaling 1 year to include:

(I) experience or education providing familiarity with the type(s) of equipment to be serviced, to include radiation safety;

(II) knowledge of protective measures to reduce potentially hazardous conditions; and

(III) 6 months of supervised assembly and repair of the type(s) of equipment to be serviced.

(B) A registrant holding a valid certificate of registration who has hired individuals to perform services before September 1, 1993, need not comply with the education and training requirements in this paragraph. Individuals hired on or after September 1, 1993, shall comply with the education and training requirements in this paragraph.

(6) Each applicant for providers of equipment shall also submit:

(A) an established main location where the radiation machines, records, etc., will be maintained for inspection. This shall be a street address, not a post office box number; and

(B) a current copy of the applicant's operating and safety procedures which is required when personnel are provided in addition to equipment.

(7) Each applicant for agency-accepted training courses specifically required by §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies), and §289.255 of this title shall also submit:

(A) a course syllabus;

(B) the number of instructional hours for each subject;

(C) a list of training resources, for example, reference books, texts, workbooks, physical facilities, etc.;

(D) all test questions and corresponding answers; and

(E) the radiation safety training, education, and experience of each instructor.

(8) A record documenting the qualifications of each individual that performs the service shall be made and maintained for inspection by the agency in accordance with subsection (v) of this section.

(k) Issuance of certificates of registration.

(1) A certificate of registration application will be approved if the agency determines that an application meets the requirements of the Texas Radiation Control Act (Act) and the requirements of this chapter. The certificate of registration authorizes the proposed activity in the form and contains the conditions and limitations as the agency deems appropriate or necessary.

(2) The agency may incorporate in the certificate of registration at the time of issuance, or thereafter by amendment, additional requirements and conditions concerning the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of radiation machines subject to this section.

(3) The agency may request, and the registrant shall provide, additional information after the certificate of registration has been issued to enable the agency to determine whether the certificate of registration should be modified in accordance with subsection (s) of this section.

(l) Terms and conditions of certificates of registration.

(1) Each certificate of registration issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable rules and orders of the agency.

(2) No certificate of registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(3) Each person registered by the agency for radiation machine use in accordance with this section shall confine use and possession of the radiation machine registered to the locations and purposes authorized in the certificate of registration.

(4) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of registration, the agency may consider the technical competence and compliance history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of registration, an amendment to a certificate of registration, or renewal of a certificate of registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous 6 years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(m) Responsibilities of registrant.

(1) The registrant is responsible for complying with this chapter and the conditions of the certificate of registration.

(2) The registrant shall designate an individual qualified in accordance with subsection (e)(3) of this section as the radiation safety officer and shall ensure the individual continually performs the responsibilities of the radiation safety officer as identified in subsection (n) of this section.

(3) Persons using radiation machines in accordance with subsection (f)(1)(B) of this section (concerning radiation accelerator or therapeutic radiation machines for human use), subsection (g) of this section (concerning application for mobile service operations), subsection (i)(1)(A) of this section (concerning persons having an accelerator for non-human use), and subsection (i)(3) of this section (concerning radiation machines in industrial radiographic operations) shall have a valid certificate of registration issued by the agency prior to use.

(4) Other than the initial installation of the first machines(s) for a new certificate of registration, no person shall use radiation machines unless they have applied for registration within 30 days of beginning use of the machines in accordance with subsection (f)(1)(A) of this section.

(5) No registrant shall engage any person for services described in subsection (b)(11) of this section until the person provides to the registrant evidence of registration with the agency.

(6) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the agency except for:

(A) the initial installation of the first machines(s) for a new certificate of registration; and

(B) the registrant authorized for demonstration and sale may demonstrate a radiation machine in accordance with paragraph (13) of this subsection.

(7) The registrant shall notify the agency of any changes that would render the information contained in the application for registration and/or the certificate of registration inaccurate. The notification shall be in writing and signed by an authorized representative.

(A) Notification is required within 30 days of the following changes:

(i) name or mailing address;

(ii) street address where machine will be used;

(iii) additional use location;

(iv) RSO; or

(v) name and registration number of the contracted "provider of equipment," registered in accordance with this section.

(B) The registrant shall notify the agency within 30 days of changes in the radiation machines that include:

(i) any change in the category(ies) of machine type or type of use as specified in §289.231(11) of this title and as authorized in the certificate of registration; or

(ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(8) The registrant, or the parent company, shall notify the agency in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy. This notification shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the case name and number, and date of filing the petition.

(9) The registrant shall inventory all radiation machines in the registrant's possession at an interval not to exceed 1 year.

(A) The inventory shall include:

(i) manufacturer's name;

(ii) model and serial number of the control panel;

and

(iii) location of radiation machine(s) (for example, room number).

(B) Records of the inventory shall be made and maintained for inspection by the agency in accordance with subsection (v) of this section.

(10) The registrant shall maintain records of receipt, transfer, and disposal of radiation machines.

(A) The records shall include:

(i) manufacturer's name;

(ii) model and serial number from the control panel;

(iii) date of the receipt, transfer, and disposal;

(iv) name and address of person machine(s) received from, transferred to, or disposed of; and

(v) name of the individual recording the information.

(B) Records of the receipt, transfer or disposal of the machine(s) shall be made and maintained for inspection by the agency in accordance with subsection (v) of this section.

(11) The persons using loaner radiation machines shall comply with the following.

(A) For persons having a valid certificate of registration, loaner radiation machines may be used for up to 30 days. Within the following 30 days, the registrant shall:

(i) notify the agency of a change in the category(ies) of machine type or type of use as specified in §289.231(II) of this title and as authorized in the certificate of registration; or

(ii) notify the agency of any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category; and

(iii) perform an equipment performance evaluation on the radiation machine(s) in accordance with §289.227(o) of this title.

(B) For persons who do not hold a valid certificate of registration, loaner radiation machines may be used for human use up to 30 days, by or under the direction of a practitioner, before applying for a certificate of registration in accordance with subsection (e) of this section. This does not include:

(i) accelerators for human use as described in subsection (f)(1)(B) of this section;

(ii) mobile services as described in subsection (g) of this section;

(iii) healing arts screening as described in subsection (h) of this section;

(iv) accelerators for non-human use as described in subsection (i)(1)(A) of this section; and

(v) industrial radiography as described in subsection (i)(3) of this section.

(12) Persons authorized to provide radiation machines shall comply with the following.

(A) Providers of equipment shall:

(i) ensure that all radiation machines used on humans for healing arts purposes meet the requirements of §289.227(o) of this title; and

(ii) provide radiation machines only to facilities holding a valid certificate of registration.

(B) Providers of equipment shall keep a log of radiation machines provided in Texas. The record shall list the following current information:

(i) date machine is provided;

(ii) name of customer; and

(iii) customer's certificate of registration number.

(C) Records of machines provided shall be made and maintained for inspection by the agency in accordance with subsection (v) of this section.

(13) Persons authorized to perform demonstration and sale of radiation machines in Texas shall comply with the following.

(A) A daily log shall be maintained and shall include:

(i) date of all demonstrations and sales of radiation machines performed in Texas;

(ii) name and address of customer; and

(iii) customer's certificate of registration number, unless the service provided is an initial installation as described in paragraph (6) of this subsection.

(B) Records of all demonstrations and sales shall be made and maintained for inspection by the agency in accordance with subsection (v) of this section.

(C) Demonstration of radiation machines on humans shall be performed by or under the direction of a practitioner in accordance with paragraph (11) of this subsection.

(D) Demonstration of radiation machines performed by the service provider shall be on phantoms only.

(E) The registrant authorized for demonstration and sale of radiation machines is responsible for performing all tests in accordance with §289.227 of this title for radiation machines used on humans for demonstration purposes.

(n) Responsibilities of RSOs.

(1) Duties of the RSO include, but are not limited to:

(A) establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable (ALARA), and to review them at intervals not to exceed

12 months to ensure that the procedures are current and conform with this chapter;

(B) ensuring that individual monitoring devices are properly used by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by §289.203 of this title;

(C) investigating and reporting to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter;

(D) assuming control and having the authority to institute corrective actions including shut-down of operations when necessary in emergency situations or unsafe conditions; and

(E) maintaining records as required by this chapter.

(2) The RSO shall ensure that personnel are adequately trained and complying with this chapter, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(o) Responsibilities of assemblers and/or installers.

(1) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the agency except for the initial installation of the first machine(s) for a new certificate of registration.

(2) Persons who assemble or install radiation machines shall notify the agency of the following information within 30 days of installation:

(A) the name, address, and certificate of registration number, except in the case of initial machine installation, of persons who have received the machines;

(B) the type of radiation machine, the manufacturer's name, model number, and control panel serial number of each radiation machine; and

(C) the date of transfer or disposal of each radiation machine.

(3) Persons who assemble, install, or repair radiation machines, or components of the machines, shall ensure the radiation machines meet the applicable requirement of this chapter when the machines are placed in operation.

(4) Persons assembling, installing, and repairing radiation machines shall keep a daily log to include:

(A) date;

(B) name of customer;

(C) customer's certificate of registration number unless the installation is an initial installation described in paragraph (1) of this subsection; and

(D) records of assembling, installing and repairing of the machines shall be made and maintained for inspection by the agency in accordance with subsection (v) of this section.

(5) Equipment performance evaluations shall be performed as follows:

(A) on all medical, chiropractic or podiatric radiation machines within 30 days after the initial installation, re-installation, and after repair of a machine component that would affect the radiation output that includes but is not limited to the timer, tube, power supply, and thereafter, in accordance with §289.227(o)(1) of this title; and

(B) on all dental radiation machines and radiation machines used in veterinary medicine within 30 days after the initial installation, re-installation, and after repair of a machine component that would affect the radiation output that includes but is not limited to the timer, tube, and power supply, and thereafter, in accordance with §289.232(i)(7) and §289.233(i)(5)(N) of this title.

(6) Radiation exposure rate (air kerma rate) or dose measurements for fluoroscopy and computed tomography (CT) radiation machines, as required by §289.227 of this title, shall be performed by a licensed medical physicist with a specialty in diagnostic medical physics.

(7) Radiation entrance exposure (air kerma) data required during EPEs on general radiographic and special purpose radiation machines, as defined in §289.227(e) of this title, shall be performed by or under the supervision of a licensed medical physicist with a specialty in diagnostic medical physics. The physicist shall:

(A) establish written procedures for non-physicists that document entrance exposure (air kerma) data;

(B) calculate the entrance exposure (air kerma);

(C) verify the entrance exposure (air kerma) meets compliance with §289.227(j) of this title; and

(D) sign the EPE reports.

(p) Expiration of certificates of registration.

(1) Except as provided by subsection (r) of this section, each certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration.

(2) If a registrant does not submit an application for renewal of the certificate of registration in accordance with subsection (r) of this section, as applicable, on or before the expiration date specified in the certificate of registration, the registrant shall:

(A) terminate use of all radiation machines and/or terminate radiation machine servicing or radiation services; and

(B) pay any outstanding fees in accordance with §289.204 of this title.

(3) Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(q) Termination of certificates of registration.

(1) When a registrant decides to terminate all activities involving radiation machines or services authorized under the certificate of registration, the registrant shall immediately:

(A) request termination of the certificate of registration in writing signed by the RSO, owner, or an individual authorized to act on behalf of the registrant; and

(B) submit to the agency a record of the disposition of the radiation machines, if applicable; and if transferred, to whom they are transferred.

(2) The registrant shall pay any outstanding fees in accordance with §289.204 of this title.

(r) Renewal of certificates of registration.

(1) An application for renewal of a certificate of registration shall be filed in accordance with subsection (e) of this section and applicable paragraphs of subsections (f) - (j) of this section.

(2) If a registrant files an application for a renewal in proper form before the existing certificate of registration expires, such existing

certificate of registration shall not expire until the application status has been determined by the agency.

(s) Modification, suspension, and revocation of certificates of registration.

(1) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter or orders issued by the agency.

(2) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(3) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(t) Reciprocal recognition of out-of-state certificates of registration.

(1) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include a:

(A) completed RC Form 226-1 (Business Information Form);

(B) completed RC Form 226-3 (Application for Registration of Industrial Radiation Machines);

(C) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(D) completed qualification forms (BRC Forms 255-E, 255-T and/or 255-OS) for each radiographer who will be working in Texas if the reciprocity request is for industrial radiography;

(E) name and Texas licensing board number of the practitioner if the radiation machines are used on humans;

(F) copy of the applicant's current certificate of registration or equivalent document;

(G) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(H) fee as specified in §289.204(d) of this title; and

(I) qualifications of personnel who will be operating the machines for human use.

(2) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed use.

(3) Once reciprocity is granted, the out-of-state registrant shall file a BRC Form 252-3 with the agency prior to each entry into the state. This form shall be filed at least 3 working days before the radiation machine is to be used in the state. If, for a specific case, the 3-day period would impose an undue hardship, the out-of-state registrant may, at the determination of the agency, obtain permission to proceed sooner.

(4) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(A) completed BRC Form 252-3;

(B) copy of the notice from the agency granting reciprocity;

(C) copy of the out-of-state registrants operating and safety procedures; and

(D) copy of the applicable rules as specified in the notice granting reciprocity.

(5) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(6) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that the action is necessary in order to prevent undue hazard to occupational and public health and safety or property.

(7) Reciprocal recognition will expire 2 years from the date it is granted. A new request for reciprocity shall be submitted to the agency every 2 years. Reciprocity requests made after the initial request shall include the following:

(A) completed RC Form 226-1 (Business Information Form);

(B) completed RC Form 226-3 (Application for Registration of Industrial Radiation Machines);

(C) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(D) completed qualification forms (BRC Forms 255-E, 255-T and/or 255-OS) for each radiographer who will be working in Texas if the reciprocity request is for industrial radiography;

(E) name and Texas licensing board number of the practitioner if the radiation machines are used on humans;

(F) copy of the applicant's current certificate of registration or equivalent document;

(G) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(H) fee as specified in §289.204(d) of this title; and

(I) qualifications of personnel who will be operating the machines.

(8) Radiation services provided by a person from out-of-state will not be granted reciprocity. Whenever radiation services are to be provided by a person from out-of-state, that person shall apply for and receive a certificate of registration from the agency before providing radiation services. The application shall be filed in accordance with subsections (e), (i), and (j) of this section, as applicable.

(u) Medical research and investigational devices.

(1) Any research using radiation machines on humans shall be approved by an Investigational Review Board (IRB) as required by Title 45, Code of Federal Regulations (CFR), Part 46 and Title 21, CFR, Part 56. The IRB shall include at least one physician to direct any use of radiation in accordance with §289.231(b) of this title.

(2) Facilities with radiation machines with investigational device exemptions that are involved in clinical studies shall comply with primary regulations that govern the conduct of clinical studies and that apply to the manufacturers, sponsors, clinical investigators, institutional review boards, and the medical device. These regulations include:

(A) 21 CFR, Part 812, Investigational Device Exemptions;

(B) 21 CFR, Part 50, Protection of Human Subjects;

(C) 21 CFR, Part 56, Institutional Review Boards;

(D) 21 CFR, Part 54, Financial Disclosure by Clinical Investigators; and

(E) 21 CFR, Part 821, Subpart C, Design Controls of the Quality System Regulation.

(v) Record/document retention requirements for registration of radiation machines.

(1) Each registrant shall maintain the following records/documents at each site, including authorized records sites for mobile services, at the time intervals specified for inspection by the agency.

Figure: 25 TAC §289.226(v)(1)

(2) Records listed in paragraph (1) of this subsection may be maintained in electronic format.

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 July 1, 2013.

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Department of State Health Services

Earliest possible date of adoption: August 11, 2013

For further information, please call: (512) 776-6972



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §§57.113, 57.115, 57.116

The Texas Parks and Wildlife Department proposes amendments to §§57.113, 57.115, and 57.116, concerning Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants. The proposed amendments would collectively allow the transport of live Mozambique tilapia and triploid grass carp without a permit for purposes of stocking private ponds or facilities, provided the person transporting the tilapia or triploid grass carp has acquired an exotic species transport invoice from a person who possesses an exotic species permit.

Under current §57.112, concerning General Rules, it is an offense for any person to release into the water of this state, import, sell, purchase, transport, propagate, or possess any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant. Under §57.111, concerning Definitions, all species of genera Tilapia, Oreochromis, and Sarotherodon (which includes Mozambique tilapia) and grass carp (*Ctenopharyngodon idella*) are designated as harmful or potentially harmful exotic fish. Under current §57.113, concerning Exceptions, Mozambique tilapia and triploid grass carp may be possessed by anyone in a private pond or facility, provided a copy of the exotic species transport invoice under which the fish were transported to the private pond or facility is retained. However, under current §57.115, concerning Transportation of Harmful or Potentially Harmful Exotic Species, only a person who holds a valid exotic species permit or a commercial shipper acting for a permit holder may transport live Mozambique tilapia or triploid grass carp. Current §57.116, concerning Exotic Species Transport Invoice, sets out the requirements of the transport invoice.

Mozambique tilapia are popular as forage fish in private ponds and for use in private, non-commercial fish-growing facilities. Triploid grass carp commonly are used as an alternative to chemical control of unwanted aquatic vegetation in ponds. The department has received requests to allow the transport of live Mozambique tilapia and triploid grass carp from a permitted seller to a private pond or facility by the person who is acquiring the fish. Under current rule, only a person who holds an exotic species permit or a commercial shipper acting on behalf of a permit holder may transport live Mozambique tilapia or triploid grass carp. The department has determined that since the rules already allow the possession of live Mozambique tilapia without a permit and possession of triploid grass carp is already allowed under a triploid grass carp permit, there is no reason not to allow their transport under documented circumstances. Therefore, the amendment would allow the transport of live Mozambique tilapia or triploid grass carp without a permit for purposes of stocking private ponds or facilities, provided the person transporting the fish has acquired an exotic species transport invoice issued by the permittee.

The proposed amendment to §57.113(i) would provide that a person may transport Mozambique tilapia or triploid grass to a private pond or facility, provided the person complies with the transport invoice requirements in §57.116. The proposed amendment to §57.113(i) would also clarify that a Mozambique tilapia or triploid grass carp possessed in a private pond or facility may be removed from those premises only if gutted or beheaded.

The proposed amendment to §57.115(a) would establish an additional exception to the prohibition on the transport of live harmful or potentially harmful exotic species for persons transporting Mozambique tilapia or triploid grass carp to a private pond or facility in compliance with the transport invoice requirements of §57.116(d).

The proposed amendment to §57.116(a) would require that a transport invoice also include add the address of the destination of the exotic species. The proposed amendment to §57.116(d) would clarify that owners of private ponds or facilities may be covered by the provisions of §57.116(d).

Ken Kurzawski, Inland Fisheries Division Program Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Kurzawski also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that are user-friendly.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed amendments will not impose any adverse economic effects on small businesses or micro-businesses. Although persons selling Mozambique tilapia or triploid grass carp may qualify as small businesses and may be impacted by the proposed amendments, any fiscal impact would be a positive impact since such persons would no longer be required to incur the cost of delivering Mozambique tilapia and triploid grass carp. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Ken Kurzawski, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591; e-mail: ken.kurzawski@tpwd.state.tx.us.

The amendments are proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.113. Exceptions.

(a) - (h) (No change.)

(i) A person may transport Mozambique tilapia or triploid grass carp to a private pond or facility or possess Mozambique tilapia in a private pond or [private] facility subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice). Mozambique tilapia and triploid grass carp possessed in a private pond or facility may be removed from those premises only if gutted or beheaded.

(j) - (n) (No change.)

§57.115. Transportation of Harmful or Potentially Harmful Exotic Species.

(a) Transport of live harmful or potentially harmful exotic species is prohibited except by:

(1) An aquaculturist in possession of a valid exotic species permit and an exotic species transport invoice;

(2) a commercial shipper acting for the permit holder in possession of an exotic species transport invoice; [ø]

(3) persons holding harmful or potentially harmful exotic species pursuant to limitations of §57.113 of this title (relating to Exceptions); or[-]

(4) persons transporting Mozambique tilapia or triploid grass carp to a private pond or facility subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(b) (No change.)

§57.116. Exotic Species Transport Invoice.

(a) An exotic species transport invoice shall contain all the following information correctly stated and legibly written: invoice number; date of shipment; name, address, and phone number of the shipper; name, address, and phone number of the receiver; and address of the destination of the exotic species, if different; aquaculture license number and exotic species permit number, if applicable; number and total weight of each harmful or potentially harmful exotic species; a check mark indicating interstate import, interstate export, or intrastate type of shipment. A completed invoice shall accompany each shipment of harmful or potentially harmful exotic species sold or transferred, and shall be sequentially numbered during the permit period; no invoice number shall be used more than once during any one permit period by the permittee.

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

(d) Owners, or their agents, of private ponds or facilities stocked with Mozambique tilapia or triploid grass carp by an Exotic Species Permit holder shall retain a copy of the exotic species transport invoice for a period of one year after the stocking date or as long as the tilapia or triploid grass carp are in the water, whichever is longer.

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 July 1, 2013.



CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING
PROCLAMATION
DIVISION 1. GENERAL PROVISIONS
31 TAC §65.19

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to §65.19, concerning Hunting Deer with Dogs. The proposed amendment would remove 12 counties from the applicability of the rule's prohibition on the use of dogs in certain counties, the effect of which would be to make it lawful in those counties for a person to use not more than two dogs to trail a wounded deer.

In 1990 the department promulgated rules prohibiting the use of dogs to trail wounded deer in Angelina, Bowie, Camp, Fannin, Franklin, Hardin, Harris, Harrison, Houston, Hunt, Jasper, Jefferson, Lamar, Liberty, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Red River, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Walker, Washington, and Wood counties. The rulemaking was necessary because the department determined that dogs were being used unlawfully to hunt deer, which was causing depletion of the resource and in the process denying others an equitable and reasonable privilege to hunt deer. The rulemaking was based on the department's statutory duty to prevent the depletion of deer populations and to provide for the most equitable and reasonable privilege to hunt (Parks and Wildlife Code, §61.055).

In 2000, Wildlife Division and Law Enforcement Division personnel determined that the practice of using dogs to hunt deer had declined to the point of being nonexistent in Bowie, Camp, Fannin, Franklin, Lamar, Morris, Red River, Rockwall, Titus, and Wood counties. In 2001, the department removed those counties from the list of counties where the use of dogs to trail wounded deer was prohibited.

In 2005, the 79th Texas Legislature enhanced the department's authority to address hunting with dogs with the enactment of House Bill 1959 (HB 1959) (Regular Session), which added Parks and Wildlife Code, §62.0065, to stipulate that a person may not recklessly use a dog to hunt or pursue a deer in this state. Parks and Wildlife Code, §62.0065, also authorized the Texas Parks and Wildlife Commission to prescribe by rule the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in 22 listed counties. In a 2005 rulemaking, in addition to implementing provisions of HB 1959, the department removed the prohibition on the use of dogs to trail wounded deer in Hunt and Washington counties.

After discussions with department biologists and law enforcement staff, the White-tailed Deer Advisory Committee recently recommended that it be lawful for a person to use not more than two dogs to trail wounded deer in additional counties where the

department has determined that hunting deer with dogs is no longer widespread or problematic. Department staff identified 12 counties (Harris, Harrison, Houston, Jefferson, Liberty, Montgomery, Panola, Polk, Rusk, San Jacinto, Trinity, and Walker) that meet the criteria.

Mitch Lockwood, Big Game Program Director, has determined that for each year of the first five years that the rule as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Lockwood also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of the state's wildlife resources (deer) from depletion and provision of the most equitable and reasonable privilege for the public to hunt deer.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not directly affect small businesses or micro-businesses. The proposed amendment affects the regulation of recreational license privileges that allow individual persons to pursue and harvest deer. The proposed amendment would not directly regulate any business and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or require the purchase or modification of equipment or services by small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by that chapter; §61.055, which requires the commission to amend or revoke its proclamations to prevent de-

pletion or waste and to provide to the people the most equitable and reasonable privilege to hunt game animals or game birds or catch aquatic animal life if the commission finds that there is a danger of depletion or waste; and §62.0065, which authorizes the Commission to regulate the use of dogs to trail wounded deer.

The proposed amendment affects Parks and Wildlife Code, Chapters 61 and 62.

§65.19. *Hunting Deer with Dogs.*

(a) For the purposes of this section:

(1) 'actual possession of a dog' means the physical control of a dog;

(2) 'constructive possession of a dog' means having the power and intention to have and control a dog but without direct control of the dog, the actual presence of physical restraint upon the dog, or the actual presence of the dog at exactly the same place as the person having the dog.

(b) It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer in all counties.

(c) It is lawful to use not more than two dogs in trailing a wounded deer in all counties, except in Angelina, Hardin, [~~Harris, Harrison, Houston,~~] Jasper, [~~Jefferson, Liberty, Montgomery,~~] Nacogdoches, Newton, Orange, [~~Panola, Polk, Rusk,~~] Sabine, San Augustine, [~~San Jacinto,~~] Shelby, and [~~Trinity,~~] Tyler[, and Walker] counties, where dogs may [~~shall~~] not be used to trail wounded deer.

(d) In Angelina, Hardin, [~~Harris, Harrison, Houston,~~] Jasper, [~~Jefferson, Liberty, Montgomery,~~] Nacogdoches, Newton, Orange, [~~Panola, Polk, Rusk,~~] Sabine, San Augustine, [~~San Jacinto,~~] Shelby, and [~~Trinity,~~] Tyler[, and Walker] counties, it is an offense for any person, during an open deer season, to be on property that the person does not own while:

- (1) in possession of a shotgun and buckshot or a slug; and
- (2) in actual or constructive possession of a dog or dogs.

(e) The penalties for a violation of this section are prescribed by Parks and Wildlife Code, §62.013.

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 July 1, 2013.

TRD-201302744

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.51

The Texas Board of Criminal Justice proposes amendments to §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines. The proposed amendments are necessary to clarify and update custodial officer certification and hazardous duty pay eligibility.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit as a result of enforcing the rule will be to maintain appropriate custodial officer certification and hazardous duty pay eligibility.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code Chapter 659, Subchapter L and §813.506.

Cross Reference to Statutes: Texas Government Code §§492.013, 508.001, 615.006, 811.001, 815.505 and the *General Appropriations Act*.

§151.51. *Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines.*

(a) Purpose. The purpose of this section [rule] is to establish eligibility criteria for authorizing custodial officer certification and hazardous duty pay to employees of the Texas Department of Criminal Justice (TDCJ [or Agency]), under the authority of [the] Texas Government Code[, §§508.001, [§]615.006, [Chapter 659, Subchapter L, §§]811.001, 813.506, and 815.505; and the *General Appropriations Act*.

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

(1) ["Custodial Officer Certification["] is service certification to the Employees Retirement System of Texas (ERS) for [those] employees [whom] the TDCJ [Agency] has determined are eligible for custodial officer service credit, which provides an additional retirement incentive when such employees have 20 or more years of such service credit.

(2) ["Custodial Officer Service Credit["] is credit in the ERS for service performed by an employee who is in a position that has been classified as a Hazardous Duty Code 1, 2, 3, 4, 6, 7, 2 or 9 [position] in accordance with the provisions of this section [rule].

(3) ["Direct Offender Contact["] is interacting with, and in the close proximity to, offenders without the protection of bars, doors, security screens, or similar devices while performing job duties. Such contact normally involves supervision or the potential for supervision of offenders in offender housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in any other areas on or away from TDCJ [Agency] property.

(4) Move is a change in position that may consist of a lateral transfer, promotion, voluntary demotion, or involuntary demotion.

(5) ~~[(4)]~~ ~~["Offender,"]~~ for the purpose of custodial officer certification and hazardous duty pay, is an individual confined in a TDCJ institution.

(6) ~~[(5)]~~ ~~["Releasee,"]~~ is an individual who has been released on parole or to mandatory supervision.

(7) ~~[(6)]~~ ~~["Routine Direct Offender Contact,"]~~ is direct offender contact that is regularly planned or scheduled while conducting TDCJ ~~[Agency]~~ business. Routine direct offender contact does not include travel time, unless the employee is responsible for the transportation and custody of offenders; ~~and it does not include casual contact.~~

(c) Procedures.

(1) Custodial Officer Certification. Employees in the following positions are eligible for custodial officer certification:

(A) Hazardous Duty Code 1 Positions. These positions are classified as correctional officer ~~[Correctional Officer]~~ 1 through warden ~~[Warden]~~ II.

(B) Hazardous Duty Code 2 Positions. These positions include all positions assigned to a unit, other than Hazardous Duty Code 1 positions, with job duties that require routine direct offender contact. Examples of such positions include, but are not limited to: agriculture specialists, maintenance supervisors, food service managers, laundry managers, classification case managers, and commissary managers. ~~[Agriculture Specialists, Maintenance Supervisors, Food Service Managers, Laundry Managers and Commissary Managers.]~~

(C) Hazardous Duty Code 3 Positions. These positions are assigned to administrative employees whose job duties require routine direct offender contact at least 50% ~~[percent]~~ of the time. Examples of such positions include, but are not limited to: investigators, compliance monitors, and accountants ~~[Investigators, Compliance Monitors, Accountants]~~ routinely required to audit unit operations; ~~Sociologists, Interviewers and Classification Officers].~~

(i) A request to include a position in this category shall be submitted to the deputy executive director ~~[Deputy Executive Director]~~ for approval.

(ii) Employees in such positions and supervisors of such employees shall complete and submit a Hazardous Duty Log in accordance with TDCJ procedures in order to justify custodial officer certification.

(D) Hazardous Duty Code 4 Positions. These positions include administrative positions that routinely respond to emergency situations involving offenders. Examples include, but are not limited to: the executive director, deputy executive director, ~~[Executive Director, Deputy Directors,]~~ Correctional Institutions Division (CID) director, ~~[Director,]~~ other division directors, ~~[Division Directors]~~ and any other positions as deemed necessary and prudent by the deputy executive director ~~[not more than 25 administrative duty officers]~~. A request to include a position in this category shall be submitted to the deputy executive director ~~[Deputy Executive Director]~~ for approval.

(E) Hazardous Duty Code 6 Positions. Employees in such positions and supervisors of such employees shall complete and submit a Hazardous Duty Log in accordance with TDCJ procedures in order to justify custodial officer certification. These positions are filled by employees whose custodial officer certifications are ~~[certification is "grandfathered,"]~~ based on the following criteria in accordance with Senate Bill ~~[(SB)]~~ 1231, 74th Legislature:

(i) On August 31, 1995, the employees were assigned to a Hazardous Duty Code 3 position; and

(ii) The employees continue to have some routine direct offender contact although it is less than 50% ~~[percent]~~ routine direct offender contact.

(F) Hazardous Duty Code 7 Positions. These positions include:

(i) Parole officers ~~[Officers]~~; and

(ii) Other positions within the Parole Division or assigned to the Board of Pardons and Paroles which have a majority of assigned duties that include assessment of risks and needs, investigation, case management and supervision of releasees to ensure that releasees are complying with the conditions of parole or mandatory supervision. It also includes those who directly supervise or are in a direct line of supervision over these employees.

(G) Hazardous Duty Code 9 Positions. Employees in such positions and the supervisors of such employees shall complete and submit an Emergency Response Log in accordance with TDCJ procedures in order to justify custodial officer certification. These positions are filled by employees whose custodial officer certifications are ~~[certification is "grandfathered,"]~~ Employees' custodial officer certifications shall remain grandfathered as long as the employees remain in Hazardous Duty Code 9 positions. When the employees move from Hazardous Duty Code 9 positions, the positions shall be automatically converted to longevity pay. Employees' grandfathered custodial officer certifications are based on the following criteria:

(i) On August 31, 1995, the employees were assigned to a position authorized for custodial officer certification and hazardous duty pay; and

(ii) The employees have been designated as members of an Emergency Response Team that may respond to emergency situations involving offenders.

(2) Hazardous Duty Pay Authorized Positions. In addition to the employees described in subsection (c)(1) of this section, ~~[rule,]~~ employees in the following positions may receive hazardous duty pay:

(A) Employees in positions authorized for custodial officer certification;

(B) Employees in Hazardous Duty Code 8 Positions. ~~[positions.]~~ These positions are assigned to the Parole Division or the Board of Pardons and Paroles and do not meet the criteria for Hazardous Duty Code 7. Employees in these positions have routine direct contact with offenders of a penal or correctional institution or with administratively released offenders subject to the jurisdiction or ~~[and/or the]~~ supervision of the Parole Division. Examples of such positions include, but are not limited to: clerks, administrative assistants, and laboratory technicians; ~~[Clerks, Administrative Assistants and Laboratory Technicians]~~ assigned to Parole field offices ~~[Field Offices]~~.

(3) Each month, the TDCJ ~~[Agency]~~ shall certify to the ERS the names of the employees and any other information determined and prescribed by the ERS as necessary for the crediting of custodial officer service and financing of benefits under Texas Government Code §813.506; ~~[Texas Government Code]~~.

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

Filed with the Office of the Secretary of State on June 25, 2013.
TRD-201302695

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TITLE 43. TRANSPORTATION

**PART 12. EL PASO COUNTY TAX
ASSESSOR-COLLECTOR**

**CHAPTER 325. REGULATION OF MOTOR
VEHICLE TITLE SERVICES**

43 TAC §325.1

The El Paso County Tax Assessor-Collector's Office proposes new 43 TAC §325.1, concerning the regulation of motor vehicle title services. The Tax Assessor-Collector has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Victor Flores, El Paso County Tax Assessor-Collector, has determined that for the first five-year period this section is in effect, there will be no fiscal impact for state or local government. The county will keep all revenues from licensing fees to offset spending.

Mr. Flores has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcement of the rule will be to reduce vehicle theft and related document fraud.

The El Paso County Tax Assessor-Collector has received motor vehicle title services records from approximately 50 to 60 distinct entities per year since 2008. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with this section will be the license fee, which is due upon application and is not refundable. Small businesses that comply with the section may experience increased business opportunities because non-compliant competitors will be sanctioned.

In preparing the proposed section, the El Paso County Tax-Assessor Collector considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. The El Paso County Tax Assessor-Collector also considered assessing lower and higher license fees but concluded that the needs of a border county like El Paso are different from the counties that set regulations under 43 TAC §95.1 (Harris County) and 43 TAC §301.1 (Fort Bend County).

Comments on the proposed new section may be submitted to Mr. Sergio H. Garcia, Enforcement Director, El Paso County Tax Office, 4641 Cohen Avenue, Suite B, El Paso, Texas 79924. The deadline for all comments is 30 days after publication in the *Texas Register*.

The El Paso County Tax Assessor-Collector proposes the new section pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This proposal does not affect any other statutes, articles, or codes.

§325.1. Motor Vehicle Title Service Licensing.

(a) Definitions.

(1) "Motor vehicle" has the meaning assigned by Texas Transportation Code §501.002(14).

(2) "Motor vehicle title service" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(3) "Title documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683, Texas Transportation Code or Chapter 70, Texas Property Code.

(4) "Title service license holder" means a person who holds a motor vehicle title service license or a title service runner's license. A title service license holder is legally responsible for each title service runner it employs or contracts.

(5) "Title service record" means the written record for each transaction in which a motor vehicle title service receives compensation.

(6) "Title service runner" means any person employed by a licensed motor vehicle title service license holder to submit or present title documents to the county tax assessor-collector.

(b) License Required.

(1) A person may not act as a motor vehicle title service or act as an agent for that business (which includes a title service runner) in El Paso County unless that person holds a license issued by the El Paso County Tax Assessor-Collector.

(2) A person commits an offense if the person violates a provision of Title 7, Subtitle A, Chapter 520, Subchapter C of the Texas Transportation Code or a rule adopted by the El Paso County Tax Assessor-Collector under Subchapter E, §§520.051 - 520.063 of the Texas Transportation Code. Such an offense is a Class A misdemeanor.

(3) Any unlicensed individual observed conducting motor vehicle transactions on behalf of others in El Paso County and who claims to be doing so without compensation shall complete an affidavit stating that the individual is not receiving compensation for the transaction. This affidavit shall be notarized and will be forwarded to the Enforcement Division of the El Paso County Tax Assessor-Collector.

(c) License Fees.

(1) License fees must be remitted when the application is submitted and are non-refundable. License fees are payable only by certified bank check or money order unless the Tax Assessor-Collector agrees, in writing, to accept cash.

(2) The fee for a motor vehicle title service license shall be \$200 for the initial application and \$200 for each annual renewal.

(3) The fee for a title service runner license shall be \$50 for the initial application and \$50 for each annual renewal.

(4) The fee for replacement of a lost title service license or title runner license shall be \$10 for the first occurrence; \$20 for the second occurrence; and \$50 for each occurrence thereafter.

(d) General License Application Requirements.

(1) Applications may only be made at the El Paso County Tax Office, Tax Office Enforcement Division, at the address published on the El Paso County Tax Assessor-Collector's website at: <http://www.epcounty.com/taxoffice/>.

(2) Applicants must submit to a criminal background check in conformance with reasonable policies adopted by the Tax Assessor-Collector.

(3) An applicant for a motor vehicle title service license must complete all forms required by the El Paso County Tax Assessor-Collector. The applicant must sign the application form and pay the license fee.

(4) All applicants must present government issued picture identification at the time of application. Lack of valid, government issued picture identification shall disqualify an applicant from being licensed in El Paso County.

(5) An applicant must be at least 18 years of age on the date the application is submitted to apply for a license in El Paso County.

(6) A motor vehicle title service shall assume the responsibility for the accuracy and validity of all documents presented to the El Paso County Tax Assessor-Collector under its name.

(7) An application must include:

(A) the applicant's name, business address, and business telephone number;

(B) the name under which the applicant will do business;

(C) the physical address of each office from which the applicant will conduct business (a P.O. Box will not be accepted) and a corresponding photo of each building where business is being conducted;

(D) the name of all individuals who have an ownership interest in the applicant motor vehicle title service company;

(E) a statement indicating whether the applicant has previously applied for a license under this section, the result of the previous application, and whether the applicant has ever been the holder of a license under this section that was revoked or suspended;

(F) the applicant's federal tax identification number;

(G) the applicant's state sales tax number; and

(H) if applicable, motor vehicle license information for each individual who has an ownership interest in the applicant's motor vehicle title service company.

(8) Title service runners must be identified and sponsored by a motor vehicle title service company in order to conduct business on the motor vehicle title service's behalf. The required documents for any runner must be on file with each service company for which the runner is an authorized agent. Individuals whose names are not on file with the Tax Assessor-Collector as a title service runner acting on behalf of a motor vehicle title service will not be allowed to conduct business in El Paso County on behalf of that motor vehicle title service.

(9) Applicants will be notified of the outcome of an application within 30 days of the application being submitted to the El Paso

County Tax Assessor-Collector. This notification will be mailed to the business address listed on the application.

(10) All licenses are issued for a one year period and must be renewed each year thereafter. A renewal application has the same requirements as a new application.

(11) A license may not be issued under a name that is fictitious; a name that is similar to or may be confused with the name of a governmental entity; or a name that is deceptive or misleading to the public.

(e) Application Requirements: Corporation. In addition to the information required in subsection (d) of this section concerning General License Application Requirements, an applicant for a motor vehicle title service license that intends to engage in business as a corporation shall submit the following information:

(1) the state of incorporation (if any);

(2) a "doing business as" (DBA) certificate or articles of incorporation;

(3) the name, address, date of birth, and social security number of each of the principal owners and directors of the corporation;

(4) information about each officer and director as requested by the El Paso County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(5) a statement indicating whether an employee, officer, or director has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

(f) Application Requirements: Partnership. In addition to the information required in subsection (d) of this section concerning General License Application Requirements, a motor vehicle title service license applicant that intends to engage in business as a partnership shall submit an application that includes the following information:

(1) the name, address, date of birth, and social security number of each partner;

(2) information about each partner as requested by the El Paso County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(3) a statement indicating whether a partner or employee has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

(g) Denial, Suspension, or Revocation of License.

(1) Grounds for the denial, suspension, revocation, or denial of reinstatement of a title service license or title service runner license in El Paso County include:

(A) having been found to have submitted a vehicle packet, or other document, to the El Paso County Tax Assessor-Collector's office which contains false information, and the El Paso County Tax Assessor-Collector determines that the false information was intentionally submitted by the motor vehicle title service license holder or title service runner;

(B) having been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the completion date of the applicant's sentence is fewer than five years from the date of applying for a motor vehicle title service license;

(C) having been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(D) having been found in violation of the administrative procedures required by the Texas Department of Transportation;

(E) in the event the Tax Assessor-Collector determines a title service license holder has delinquent Class C misdemeanor fines, the licensee shall have thirty calendar (30) days from the date of deposit of written notice into the U.S. Postal Service to pay or otherwise resolve the fines. If the fines remain unresolved after thirty calendar (30) days, the Tax Assessor-Collector may, in his discretion, deny, suspend, refuse to renew, or revoke, as provided in this section, the license of that title service license holder;

(F) a title service runner license may be revoked or suspended if the title service runner has presented a title packet to the El Paso County Tax Assessor-Collector that was not authorized by a licensed motor vehicle title service or if the title service runner altered or forged the original paperwork prepared for and signed by the motor vehicle title service;

(G) failure to maintain records required by §520.057 of the Texas Transportation Code or this section;

(H) behavior that causes disruption or creates a security concern to any tax office location or contracted office location, as determined by the Tax Assessor-Collector or designee, in his discretion;

(I) involvement in the issuance of fraudulent liability insurance while holding an El Paso County title service license, as determined by the Tax Assessor-Collector or designee, in his discretion; and

(J) all factual determinations under this section shall be made by the Tax Assessor-Collector, in his discretion, by a preponderance of the evidence standard.

(2) If the El Paso County Tax Assessor-Collector makes a determination that a person's license hereunder should be denied, cancelled, suspended, or revoked, then the Tax Assessor-Collector shall send notice of the action to the person, by first class mail, stating the facts or conduct alleged to warrant the action.

(3) Upon a determination of violation of this section, the El Paso County Tax Assessor-Collector may order the violator's license suspended for up to one (1) year for the first offense. The Tax Assessor-Collector, in his discretion, may order an additional suspension for up to one year or the revocation of the holder's license for the second offense. A license may be revoked upon a third offense.

(4) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation. A person whose license has been revoked must apply for a new license under this section.

(5) The Tax Assessor-Collector may discipline a title service license holder for acts in violation of these regulations or other law committed by a title service runner employed or contracted by the title service license holder. Such discipline may include suspension or revocation of the title service license holder's license if the Tax Assessor-Collector also suspends or revokes the license of the at-fault title service runner.

(h) Appeals.

(1) The El Paso County Tax Assessor-Collector shall appoint a five member Review Board to review any appeal of an action to refuse, cancel, suspend, revoke, or reinstate a license under this section. The Review Board shall consist of one member of the County

Attorney's office, one member of the District Attorney's office, the Tax Assessor-Collector's Motor Vehicle Director, and two law enforcement officers.

(2) Memberships will last for two years and replacements will be selected on a staggered basis. For the first year that the Board is established, two of the memberships shall be for one year to accommodate staggering. The Tax Assessor-Collector, in his discretion, shall determine which initial board memberships to stagger. A member may be reappointed for additional terms as deemed appropriate by the El Paso County Tax Assessor-Collector.

(3) If a member is absent for three consecutive meetings, the Tax Assessor-Collector, in his discretion, may remove the member and appoint a new member to serve the remainder of the term.

(4) If a review board member is removed or resigns, the Tax Assessor-Collector may appoint a new review board member to fill that member's position. The new member will serve for the remainder of the former member's term.

(5) A person who receives notice of adverse action taken on his own license by the El Paso County Tax Assessor-Collector may submit a written request for appeal or protest and submit evidence, in the form of documents or testimony, to demonstrate that person's compliance with all requirements for the issuance, retention, or reinstatement of the person's license. The person must submit evidence and file a written request for the appeal of an action taken on the person's license with the County Tax Assessor-Collector within 10 calendar days from the date of receipt of the notice of action on the person's license. Proof of receipt of a notice of action, or any other document that triggers a deadline under this section, includes, but is not limited to, a certified mail return receipt. The Tax Assessor-Collector or the Review Board may grant additional time to comply with this section upon written request.

(6) Evidence and/or a written request for an appeal must be sent to El Paso County Tax Office, Enforcement Division, via certified mail at the address published at: <http://www.epcounty.com/taxoffice/>.

(7) Upon timely filing of a request for an appeal, the County Tax Assessor-Collector shall request review by the Review Board. The adverse action shall be stayed until a final decision is made on the license.

(8) The Review Board shall meet as needed, on a date determined by the El Paso County Tax Assessor-Collector. The Board will review any appeals and make a recommendation to the County Tax Assessor-Collector stating whether the Board agrees or disagrees with the action taken.

(9) The El Paso County Tax Assessor-Collector shall appoint a member of the Review Board to chair meetings of the Review Board.

(10) A quorum of three members of the Review Board must be present to render a decision. No proxy votes will be allowed.

(11) Review Board decisions are administrative in nature. As such courtroom rules of evidence shall not apply. However, the Review Board Chair may limit or discard evidence that is not material and relevant.

(12) The parties to a Review Board proceeding shall file and exchange documentary evidence at least seven (7) days before a Review Board proceeding. The Chair may, at the Chair's discretion, exclude evidence that is not timely filed and served on the other party(ies).

(13) A simple majority vote of a quorum of Review Board members shall determine the recommendation on matters under consid-

eration. The Tax Assessor-Collector's Enforcement Division Director, or his or her designee, shall present the case to the Review Board and carry the burden of proof. The standard of proof shall be by a preponderance of the evidence.

(14) A quorum of the Review Board may draft and approve other procedural rules that are not inconsistent with this section or other law. Any such rules must be published on the El Paso County website and made available to the public in print form upon request.

(15) All decisions related to license appeals or protests shall be subject to final review and determination by the El Paso County Tax Assessor-Collector. The El Paso County Tax Assessor-Collector shall send disposition of the appeal to the person by registered or certified mail. If the Tax Assessor-Collector does not reinstate the license, any adverse action stayed by the appeal will be reinstated.

(i) License Renewal.

(1) A license pursuant to this section expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee. All renewals will be subject to an additional criminal background check and confirmation of the applicant's current address and contact information.

(2) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the El Paso County Tax Assessor-Collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(3) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the El Paso County Tax Assessor-Collector one and one-half times the required renewal fee.

(4) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the El Paso County Tax Assessor-Collector two times the required renewal fee.

(5) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(6) Notwithstanding paragraph (5) of this subsection, if a person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired license. The person must pay to the El Paso County Tax Assessor-Collector a fee that is equal to two times the required renewal fee for the license.

(7) Before the 30th day preceding the date on which a person's license expires, the El Paso County Tax Assessor-Collector shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the El Paso County Tax Assessor-Collector. Failure to send notice under this provision does not provide any right or remedy to license holders.

(j) Requirements for Conducting Motor Vehicle License Transactions.

(1) All vehicle transactions for El Paso County will be processed at an official El Paso County Tax Office, including 500 E. Overland Ave., Suite 101, El Paso, Texas 79901; 4641 Cohen Ave., Suite B, El Paso, Texas 79924; and Ysleta Annex, 9521 Socorro Rd., Suite

B-4, El Paso, Texas 79927 or any other location specified by the Tax Assessor-Collector in writing at: <http://www.epcounty.com/taxoffice/>.

(2) Title service license holders and title service runners may not conduct business at privately run, contracted offices. A list of these offices is available upon request.

(3) An El Paso County Tax Assessor-Collector letter of authorization form must accompany all motor vehicle title service transactions. Title service providers may obtain a blank letter of authorization from the El Paso County Tax Assessor-Collector. The motor vehicle title service company is responsible for the accuracy and validity of the information for each vehicle listed. Only vehicles authorized and listed by the licensed motor vehicle title service will be processed.

(4) Motor vehicle title services and runners may only process the following documents: motor vehicle title applications; motor vehicle registration renewal applications; requests for replacement windshield stickers; and requests for new or replacement vehicle license plates. The El Paso County Tax Assessor-Collector does not currently accept applications for a motor vehicle mechanic's lien title or motor vehicle storage lien title from motor vehicle title services or runners.

(5) After the final vehicle transaction on each transaction sheet is completed, a copy of the transaction sheet will remain on file at the office of the El Paso County Tax Assessor-Collector.

(6) A holder of a motor vehicle title service license shall maintain records as required by Texas law for each transaction in which the license holder receives compensation. The records shall include:

(A) the date of the transaction;

(B) the name, age, address, sex, driver license number, and a legible photocopy of the driver's license for each customer; and

(C) the vehicle make, model, year, license plate number, vehicle identification number, and a legible photocopy of proof of financial responsibility for the motor vehicle involved.

(7) A motor vehicle title service shall keep, for at least two (2) years after the date of the transaction:

(A) two copies of all records required under this section;

(B) legible photocopies of any documents submitted by a customer; and

(C) legible photocopies of any documents submitted to the El Paso County Tax Assessor-Collector.

(8) A motor vehicle title service license holder or any of its employees shall allow an inspection of the required records by a peace officer on the premises of the motor vehicle title service at any reasonable time to verify, check, or audit the records. Failure to do so, or to maintain required records, may result in discipline under this section.

(k) Exemptions. The following persons and their agents are exempt from the licensing and other requirements described in this section:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Texas Transportation Code Chapter 503;

(2) a vehicle lessor holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under §2301.254(a), Texas Occupations Code; and

(3) a vehicle lease facilitator holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code.

(l) The Tax Assessor-Collector may require title service license holders and title service runners to attend an annual training to orient such licensees to this section, Texas law, and the Tax Assessor-Collector's policies under this section. Failure to attend the training may result in discipline under this section.

(m) The Tax Assessor-Collector may authorize other policies and procedures that are not inconsistent with this section or other law and to the extent authorized by law.

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

Filed with the Office of the Secretary of State on June 27, 2013.

TRD-201302731

Victor A. Flores

Tax Assessor-Collector

El Paso County Tax Assessor-Collector

Earliest possible date of adoption: August 11, 2013

For further information, please call: (915) 546-2140



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.505

The State Office of Administrative Hearings (SOAH) adopts amendments to 1 TAC §155.505, concerning Summary Disposition. The amendments are adopted with changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1751).

The adopted amendments are intended to clarify procedures concerning summary disposition in cases pending at SOAH.

SOAH received comments concerning the proposed amendments to 1 TAC §155.505 during the comment period of March 15, 2013, through April 15, 2013. Comments were received from the Texas Department of Licensing and Regulation and three individuals. The commenters suggested modifications, but none of the commenters opposed the proposed amendments. A summary of the comments and responses follows.

Comment: One commenter requested clarification on whether case law that applies to summary judgment in civil courts would also apply to summary disposition at SOAH.

Response: Legal principles related to summary judgment in civil courts and to summary disposition at SOAH are similar, and SOAH administrative law judges often look to case law concerning summary judgment when considering motions for summary disposition. Much of SOAH's rule is patterned after Texas Rule of Civil Procedure (TRCP) §166a. However, to the extent the two rules differ, case law related to procedures for summary judgment in civil courts may not apply to summary disposition at SOAH.

Comment: One commenter requested clarification on whether SOAH allows no-evidence motions for summary disposition. If such motions are not allowed, the commenter recommended that the rule should expressly state this to prevent the filing of such motions.

Response: TRCP §166a(i) provides for no-evidence motions for summary judgment in civil court cases. However, SOAH's rule does not allow no-evidence motions for summary disposition in SOAH administrative hearings. SOAH agrees with the commenter's recommendation for the rule to state that no-evidence motions for summary disposition are not authorized. This will better clarify the procedures and could avoid unnecessary efforts by parties filing or responding to such motions. Therefore,

subsection (a) is modified to add the following sentence: "Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing."

Comment: Another commenter suggested that the rule is confusing because the word "may" in the first sentence of subsection (a) indicates that an administrative law judge has discretion whether to grant summary disposition, while the second sentence indicates that summary disposition is mandatory when the requirements are met.

Response: SOAH agrees that the wording of the first two sentences of subsection (a) could lead to confusion. SOAH also concludes that the first sentence of subsection (a) is not necessary. Therefore, the first sentence of subsection (a) has been removed.

Comment: One commenter proposed that the clause at the end of subsection (a) - "and that the moving party is entitled to a decision in its favor as a matter of law" - should be eliminated or moved to subsection (b) as a pleading requirement.

Response: SOAH disagrees with this proposal. It is fundamental to a summary disposition that the moving party establish both that no genuine issue of material fact exists and that those facts entitle the moving party to a favorable decision as a matter of law. As stated in subsection (a), a decision on a motion for summary disposition will be based on the pleadings, the motion, and the summary disposition evidence. A party must show in its motion that the established facts entitle it to a decision in its favor.

Comment: One commenter requested that the word "all" be changed to the word "the" in subsections (b)(3) and (c)(2). The commenter thought that use of the word "all" in subsection (b)(3) would require movants to set out each and every fact in support of the motion even when repetitious; and use of the word "all" in subsection (c)(2) would require every party opposing the motion to set out each and every argument against the motion.

Response: SOAH declines to adopt these proposed changes. SOAH used the word "all" intentionally in subsection (b)(3) to require the movant to specifically state all facts upon which a motion for summary disposition is based and in subsection (c)(2) to require that all arguments against a motion be stated in the response. One purpose for this is to prevent parties from asserting new arguments or previously undisclosed facts when a hearing is held on a motion for summary disposition. Moreover, if multiple parties in a case oppose a motion for summary disposition, one opposing party can expressly incorporate by reference another party's arguments without the need to restate them.

Comment: One commenter recommended that subsection (b)(5) be modified to provide that "upon objection" a party's motion for summary disposition could be denied for failure to

comply with requirements of subsection (b). This commenter stated that the administrative law judge should not become an advocate for a party by denying a motion when no objection has been asserted.

Response: SOAH declines to adopt this recommendation. The requirements of subsection (b) are for the benefit of the administrative law judge as well as the opposing party. A judge should be authorized to deny an untimely or incomplete motion for summary disposition whether or not the opposing party files an objection.

Comment: One commenter expressed concern that subsection (d)(1) allows pleadings, interrogatory answers, other discovery responses, admissions, and materials obtained by discovery to be included as summary disposition evidence. The commenter noted that a party may not use its own pleading, discovery answers, or admissions as summary disposition evidence to support its own position. Therefore, this commenter requested that subsection (d)(1) be revised to limit the use pleadings, admissions, and discovery responses to those of an opponent.

Response: While SOAH acknowledges the general legal principle raised by the commenter, it declines to adopt the proposed revision. Exceptions can occur when a party's own pleadings, discovery answers, or responses to requests for admission are relevant and admissible. For example, if a moving party sought summary disposition based on deemed admissions due to an opponent's failure to respond to a request for admissions, the opponent could offer its response to the request for admission as summary disposition evidence to establish that it actually did respond to those requests. Or, if a moving party relied on an opponent's pleadings or an interrogatory answer to support or oppose a motion for summary disposition, the opponent could offer its own amended pleading or amended interrogatory answers to show that an amendment or correction had been made. Thus, circumstances can exist when a party's own pleadings or discovery answers are competent summary disposition proof. If a party offers its own pleadings, discovery responses, or admissions for an inappropriate purpose, the ALJ can decline to consider such evidence. In short, SOAH concludes that it should not exclude all such evidence by rule because circumstances can occur when these items are appropriately considered as summary disposition evidence.

Comment: One commenter expressed concern that the requirement of subsection (d)(3) that "all" summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. The commenter thought this would compel a party to file voluminous documents when only a small part might be relevant.

Response: SOAH does not find this concern to be well founded. Nothing in the rule requires a party to file irrelevant summary disposition evidence. Rather, the rule only requires evidence "offered in support of or in opposition to a motion for summary disposition." There is no requirement for parties to file other irrelevant materials.

Comment: Two commenters thought the wording of subsection (d)(2) is grammatically awkward.

Response: SOAH agrees with these comments, and subsection (d)(2) is revised to read as follows:

"(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the judge must

be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted."

Comment: One commenter expressed concern about the third sentence in subsection (e)(3), which provides: "Upon an evidentiary hearing of the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly." The commenter stated that use of the word "upon" in this sentence suggests that matters resolved by summary disposition are not deemed established unless a later hearing is conducted on other issues.

Response: To remove any ambiguity, SOAH has revised the third sentence of subsection (e)(3) to read as follows: "If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly."

The amendments to 1 TAC §155.505 are adopted under Texas Government Code §2003.050(a), which authorizes the Chief Administrative Law Judge to adopt rules that govern the procedures for conducting hearings at SOAH.

The amendments affect Texas Government Code, Chapter 2003.

§155.505. Summary Disposition.

(a) Final decision or proposal for decision on summary disposition. Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing.

(b) Motions: deadlines, content, and format.

(1) A party may file a motion for summary disposition at any time after SOAH acquires jurisdiction over a case, but the motion must be filed at least 30 days before a scheduled hearing on the merits, unless otherwise ordered by the judge.

(2) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(3) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(4) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 14 days after you received this motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. See SOAH's rules at 1 Texas Administrative Code §155.505. These rules are available on SOAH's public website."

(5) A party's motion may be denied for failure to comply with these requirements.

(c) Responses to motions: deadlines, content, and format.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition. The response and opposing summary disposition evidence shall be filed within 14 days of receipt of the motion, unless otherwise ordered by the judge.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(d) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts, interrogatory answers and other discovery responses, pleadings, admissions, affidavits, materials obtained by discovery, matters officially noticed, stipulations, authenticated or certified public, business, or medical records, and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the judge must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(e) Proceedings on motions.

(1) A judge may hold a hearing on a motion for summary disposition or rule on the motion without a hearing.

(2) If summary disposition is granted on all contested issues in a case, the judge shall close the record and prepare a final decision or proposal for decision as appropriate. The final decision or proposal for decision shall include a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.

(3) If summary disposition is granted on some but not all of the contested issues in a case, the judge shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The judge shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the judge shall include in the final decision or proposal for decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

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 June 26, 2013.

TRD-201302698

Thomas H. Walston

General Counsel

State Office of Administrative Hearings

Effective date: July 16, 2013

Proposal publication date: March 15, 2013

For further information, please call: (512) 475-4931

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TITLE 28. INSURANCE

**PART 6. OFFICE OF INJURED
EMPLOYEE COUNSEL**

**CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS**

28 TAC §276.5

The Public Counsel of the Office of Injured Employee Counsel (OIEC) adopts an amendment to §276.5, concerning Employer's Notification of Ombudsman Program to Employees, without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2741).

The OIEC adopts the amendment to §276.5 to reflect OIEC's new website address. This adoption allows for continued compliance with Texas Labor Code §404.153 and §404.154, which require employers to post notice in the workplace so their employees may be informed as to the services performed by the Ombudsman Program in accordance with House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005.

Adopted §276.5(a) conforms with Texas Labor Code §404.153 requiring each employer participating in the Texas workers' compensation system to notify its employees of the ombudsman program as prescribed by OIEC. Adopted §276.5(b) states that the Notice shall be publicly posted in English, Spanish, and any other language common to the employer's employees. Adopted §276.5(c)(1) provides that the Notice shall be in the text provided by OIEC without any additional words or changes. Adopted §276.5(c)(2) provides the Notice may be obtained by downloading it from OIEC's website or by calling OIEC's toll-free telephone number.

Adopted §276.5 adopts by reference the amended version of the Notice to Employees Concerning Assistance Available in the Workers' Compensation System from the Office of Injured Employee Counsel. The effective date of the Notice is September 1, 2013. This timeframe provides system participants adequate time to post the amended Notice.

OIEC received no public comment on this rulemaking initiative either in writing or at the public hearing scheduled on April 12, 2013.

For: None.

Against: None.

The amended section is adopted pursuant to Texas Labor Code §§404.004(a), 404.153, 404.154 and 404.006. Section 404.004 requires OIEC to prepare information of public interest describing the functions of the agency. Section 404.153 provides that each employer shall notify its employees of the ombudsman program as prescribed by OIEC. Section 404.154 provides that OIEC shall widely disseminate information about the ombuds-

man program. Section 404.006 provides that the public counsel shall adopt rules as necessary to implement Chapter 404 of the Labor Code.

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

Filed with the Office of the Secretary of State on July 1, 2013.

TRD-201302742

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Effective date: September 1, 2013

Proposal publication date: May 3, 2013

For further information, please call: (512) 804-4182



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.1

The Texas Board of Criminal Justice adopts amendments to §159.1, concerning Substance Abuse Felony Punishment Fa-

cilities Eligibility Criteria, without changes to the proposed text as published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2489).

The adopted amendments are necessary to add that probationers under the age of 18 are not eligible to participate in the Substance Abuse Felony Punishment Facilities.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §493.009 and Texas Code of Criminal Procedure Article 42.12, §14.

Cross Reference to Statutes: Texas Government Code §492.013.

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 June 25, 2013.

TRD-201302696

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Effective date: July 15, 2013

Proposal publication date: April 19, 2013

For further information, please call: (512) 463-9693



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Higher Education Coordinating Board

Rule Transfer

Title 19, Part 1

Through the enactment of Senate Bill 1158, 83rd Legislature, 2013, Regular Session, the powers and duties of the Texas Higher Education Coordinating Board relating to the administration of the Hazlewood Act are transferred to the Texas Veterans Commission.

In order to comply with that bill, the rules relating to the administration of the Hazlewood Act, currently located under Title 19, Part 1, Chapter 21, Subchapter NN of the Texas Administrative Code, are transferred and reorganized under Title 40, Part 15, Chapter 461, Subchapter A of the Texas Administrative Code.

This transfer is effective May 26, 2013.

Please refer to Figure: 19 TAC Chapter 21, Subchapter NN to see the complete conversion chart.

TRD-201302737



Texas Veterans Commission

Rule Transfer

Title 40, Part 15

Through the enactment of Senate Bill 1158, 83rd Legislature, 2013, Regular Session, the powers and duties of the Texas Higher Education Coordinating Board relating to the administration of the Hazlewood Act are transferred to the Texas Veterans Commission.

In order to comply with that bill, the rules relating to the administration of the Hazlewood Act, currently located under Title 19, Part 1, Chapter 21, Subchapter NN of the Texas Administrative Code, are transferred and reorganized under Title 40, Part 15, Chapter 461, Subchapter A of the Texas Administrative Code.

This transfer is effective May 26, 2013.

Please refer to Figure: 19 TAC Chapter 21, Subchapter NN to see the complete conversion chart.

TRD-201302738



Figure: 19 TAC Chapter 21, Subchapter NN

Current rules from: Title 19, Part 1 Texas Higher Education Coordinating Board Chapter 21. Student Services Subchapter NN. Exemption Program for Veterans and their Dependents (The Hazlewood Act)		Transferred to: Title 40, Part 15 Texas Veterans Commission Chapter 461. Veterans Education Subchapter A. Exemption Program for Veterans and their Dependents (The Hazlewood Act)	
Section	Heading	Section	Heading
§21.2099	Authority and Purpose	§461.10	Authority and Purpose
§21.2100	Definitions	§461.20	Definitions
§21.2101	Hazlewood Act Exemption	§461.30	Hazlewood Act Exemption
§21.2102	Eligible Veterans	§461.40	Eligible Veterans
§21.2103	Eligible Spouses	§461.50	Eligible Spouses
§21.2104	Eligible Children	§461.60	Eligible Children
§21.2105	The Application	§461.70	The Application
§21.2106	Supporting Documentation for the Initial Hazlewood Act Exemption Application	§461.80	Supporting Documentation for the Initial Hazlewood Act Exemption Application
§21.2107	Subsequent Hazlewood Exemption Awards	§461.90	Subsequent Hazlewood Exemption Awards
§21.2108	Assigning Unused Hours to a Child (Hazlewood Legacy Act)	§461.100	Assigning Unused Hours to a Child (Hazlewood Legacy Act)
§21.2109	Release of Data to the Board and Institutions	§461.110	Release of Data to the Board and Institutions
§21.2110	Reporting	§461.120	Reporting

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes an amendment to §151.51.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201302691

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: June 25, 2013



Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance will review and consider for readoption, revision, or repeal all sections of Chapter 10, concerning Workers' Compensation Health Care Networks, of Title 28, Part 1 of the Texas Administrative Code, in compliance with the Texas Government Code §2001.039.

The department will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* under the Administrative Procedure Act, Texas Government Code Chapter 2001.

If you wish to comment on whether these rules should be repealed, readopted, or readopted with amendments, you must do so in writing no later than 5:00 p.m., August 12, 2013. The Texas Department of Insurance requires two copies of your comments. Send one copy to Norma Garcia, Chief Clerk, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or electronically to chiefclerk@tdi.texas.gov. Send other

copy to Stan Strickland, Associate Commissioner, Legal Section, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104.

TRD-201302789

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: July 3, 2013



Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of 37 TAC §159.1, concerning Substance Abuse Felony Punishment Facilities Eligibility Criteria, pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The proposed rule review was published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2521).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §159.1.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201302690

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: June 25, 2013



Texas Department of Housing and Community Affairs

Title 10, Part 1

Texas Department of Housing and Community Affairs (the "Department") has completed its rule review of 10 TAC §1.4, concerning Protest Procedures for Contractors, pursuant to Texas Government Code §2001.039. The Department published Notice of Intent to Review this section in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1707).

The purpose of the review was to assess whether the reasons for adopting the section continue to exist. No comments were received regarding the review.

This rule was initially adopted to provide any actual or prospective bidder, offeror, or contractor the process and opportunity to address their grievances to the Department. As a result of this review, the Department finds that the reasons for adopting 10 TAC §1.4, concerning Protest Procedures for Contractors, continue to exist and readopts the section without change in accordance with the requirements of the Texas Government Code §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-201302756
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 1, 2013



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.226(v)(1)

	Name of Records/Documents	Rule Cross Reference	Time Interval for Keeping Records/Documents
(A)	Records of training and experience	§289.226(j)(8)	Until termination of registration or 5 years after the individual terminates employment with the facility
(B)	Inventory of radiation machines	§289.226(m)(9)	3 years
(C)	Receipt, transfer, and disposal of radiation machines	§289.226(m)(10)	Until termination of registration
(D)	Radiation machine log for providers of equipment.	§289.226(m)(12)(B)	10 years
(E)	Demonstration and sale log for radiation machines	§289.226(m)(13)(B)	10 ycars
(F)	RSO annual review of operating and safety procedures	§289.226(n)(1)(A)	3 years
(G)	Assemble, installation, and repair log for radiation machines	§289.226(o)(4)(D)	10 years



Texas Department of Agriculture

License Suspension and Revocation Guidelines

The Texas Department of Agriculture (the department) publishes these internal guidelines for license suspension and revocation, which have not been previously communicated in writing, in order to provide greater transparency for licensees¹ and other interested stakeholders. The guidelines were developed and are being published to encourage consistency in the department's internal enforcement processes as well as adequate enforcement responses to instances of egregious noncompliance. Although monetary penalties will remain the department's primary and first-choice method of deterrence, license suspensions and revocations are an important tool for dealing with recalcitrant or egregious violators who are not deterred by such penalties.

The intent of this publication is to inform interested stakeholders regarding the types of enforcement actions TDA is authorized to and may take in response to habitual, repetitive, frequent, or egregious noncompliance. These guidelines are designed to complement previously published guidelines regarding the assessment of monetary penalties, as well as specific suspension and revocation guidelines for particular programs, such as the Grain Warehouse and Organic Certification programs. Due to generally high rates of compliance and the effectiveness of monetary penalties in deterring most potential violators, the department anticipates that very few licensees will be subject to license suspension or revocation under these guidelines.

Each business or individual that obtains a license with the department is assigned a client number. Each client then receives an account number for each location or group of locations required by law to obtain a separate license. These separate licenses have unique license numbers, also referred to as account numbers, that are associated with the one client number. The client number is not a license number, but merely an internal tracking number tying related license/account numbers together for the efficient billing of regulatory fees and bulk issuance of license renewal forms.

When applying these guidelines, the violation history for a particular licensed location will be used as the basis for determining whether a license suspension or revocation is warranted. Only those violations at that particular location, committed under the particular license, and subject to a monetary penalty will be considered to be a prior violation. Minor violations handled without the assessment of monetary penalties will not be considered a prior violation.

As these are merely guidelines, nothing within the guidelines should be read as restricting or limiting the department's discretion to take appropriate action outside of the guidelines should extraordinary circumstances exist or in response to habitual, repetitive, frequent, or egregious noncompliance not described within the guidelines. A particular incident of noncompliance may have unique characteristics that would warrant a departure, as justice requires, to avoid an overly harsh result or to ensure an adequate deterrent effect. Thus, persons subject to the effects of these guidelines are encouraged to promptly respond to a notice of proposed suspension or revocation and provide the department's Enforcement Division with accurate and complete information regarding the violation and any mitigating circumstances.

Prior to publication, the department sought and received input from various representatives of the regulated community. Valuable suggestions from these industry groups have been incorporated into the guidelines.

Special Note: Because these suspension and revocation guidelines, in conjunction with the use of statistical risk analysis and additional risk response inspections, will identify and address most instances of habitual, repetitive, frequent, or egregious noncompliance as a separate parallel process, the department is concurrently amending its Weights and Measures penalty guidelines to remove those provisions designed to address the same situations, such as references to suspensions and revocations, a large number of automatic penalty increases for subsequent violations, and minimum penalty amounts for some violations. Changes to other department penalty guidelines to reflect the implementation of the suspension and revocation guidelines will follow as deemed necessary. Under all such guidelines, the department retains the discretion to depart from the guidelines whenever the available evidence indicates unique circumstances that demonstrate the need for a more or less harsh enforcement response.

LICENSE SUSPENSION AND REVOCATION GUIDELINES

PURPOSE. To provide internal guidelines for suspension or revocation of a license issued by the Texas Department of Agriculture (TDA).

NOTIFICATION. A written statement will be included in each Notice of Violation and Warning Letter, whether manually prepared or auto-generated, that a license suspension or revocation may be imposed for frequent, repetitive, or habitual violations.

TDA shall devise and implement public outreach activities designed to inform regulated businesses of TDA's license suspension and revocation guidelines.

LICENSE SUSPENSION. Except in the most egregious circumstances, license suspension shall be utilized by TDA as a precursor to license revocation.

A license issued by TDA (by licensed location) shall be suspended if the licensee commits three or more similar violations of any type within a continuous three-year period, unless this action is rejected by the special circumstances review process outlined below.

A license issued by TDA (by licensed location) shall be suspended without regard to the number of violations by the licensee if the licensee commits one of the following violations, unless expressly prohibited by the governing statute or other law:

1. Violation of a TDA stop-sale order, out-of-order tag, cease and desist order, seizure order, or any other similar agency notice prohibiting or requiring an action.
2. Failure or refusal to prepare, maintain, or within a time period specified in a request, submit or permit review of required records.
3. Two or more weights and measures predominance violations within a continuous two-year period.
4. Engaging in pest control practices in a manner that could create a significant risk of substantial harm to an individual, the public health, the safety of the public or others, or the environment.

5. Performing work in a category for which a certified applicator or technician is not licensed or an apprentice is not trained.
6. Operating during a period in which required insurance or bonding is not in effect.
7. Failure to meet requirements necessary to maintain or retain a license.
8. Refusal to permit a TDA inspection required by statute or rule.
9. Providing false information to TDA either knowingly or with gross negligence. False information is provided with gross negligence if true and accurate information was readily available or verifiable or the information was submitted without regard to whether the information was true and accurate.

Each license suspension order shall specify the actions, deadlines, and standards for avoiding a related subsequent license revocation, including the timeframe within which license revocation could occur as the result of the licensee's failure to comply with the terms of the order.

The duration of a license suspension under these guidelines will be determined based upon the nature, circumstances, extent, and gravity or the hazard or potential hazard of the violation, but shall be no less than 10 business days.

LICENSE REVOCATION. A license issued by TDA (by licensed location) shall be revoked if the licensee commits five or more similar violations of any type within a continuous three-year period, unless this action is rejected by the special circumstances review process outlined below.

A license issued by TDA (by licensed location) shall be revoked without regard to the number of violations by the licensee if the licensee commits one of the following violations, unless expressly prohibited by the governing statute or other law:

1. Obtaining a license that the person was not otherwise qualified for or entitled to through fraud, deceit, or other intentional or knowing misrepresentation in the application process.
2. Submitting a required document to TDA that the person knew contained false information.
3. Repeated material acts of misrepresentation or the making of material false statements with the intent to deceive or defraud and for the purpose of inducing another person to reasonably act thereon to that person's detriment.
4. Cheating on an examination or practical test required for issuance of the license.
5. The commission of any criminal act in whole or part through display or use of the issued license.
6. Engaging in pest control practices in a manner that caused substantial actual harm to an individual, the public health, the safety of the public or others, or the environment.
7. Performing work in a category for which a certified applicator or technician is not licensed or an apprentice is not trained, during or after a suspension for the same.
8. Grossly negligent or intentional poisoning of a person or an animal or plant with significant economic, environmental, or historical value.
9. Repeated or persistent refusal to comply with a TDA order or to permit inspection by a TDA inspector.

The duration of a revocation under these guidelines shall be for a time period of one year unless the nature, circumstances, extent, and gravity or the hazard or potential hazard of the violation justifies a different

time period or the time period for revocation expressly established by the governing statute is different.

SPECIAL CIRCUMSTANCES REVIEW. The Enforcement Division will determine whether special circumstances exist that may warrant a deviation from these guidelines. Cases involving such circumstances shall be submitted to a special circumstances review committee comprised of one representative from the Enforcement Division and two representatives of the Agriculture and Consumer Protection (ACP) Division. The Deputy General Counsel or the deputy's designee shall act as chairman of the committee.

Other agency staff may attend for purposes of providing expert advice regarding the regulated industry or to provide other input as requested. The committee, however, shall deliberate and make its final determination without the presence of other agency staff.

The committee will review each submitted case to determine whether a departure from these guidelines is warranted or not. If the committee determines that departure is not warranted, these guidelines shall be immediately implemented with respect to the particular case. If the committee determines that a departure is warranted, the committee's chair shall submit the committee's recommendation to depart from these guidelines to the Chief of Staff within 48 hours of said determination.

The Chief of Staff shall approve or reject the committee's recommendation within 7 business days of submission. If no decision is made within the specified time period, the recommendation is rejected.

SCOPE. These guidelines supplement, but do not supersede, the license suspension and revocation procedures in the Organic Certification and Grain Warehouse programs or any other program for which an ACP-approved written license suspension and revocation policy currently exists or is later adopted. These guidelines also do not supersede any license revocation, suspension, or voidance imposed by operation of law. When applying these guidelines, the violation history for a particular licensed location will be used as the basis for determining whether a license suspension or revocation is warranted. These guidelines shall not be construed to limit or restrict in any manner TDA's statutory authority to suspend or revoke a license.

EFFECTIVE DATE. These guidelines are effective beginning July 1, 2013.

¹ The term "license" includes a permit, certificate, approval, registration, or any other similar form of permission issued by a state agency and required by law. See Texas Government Code §2001.003(2).

TRD-201302801
 Dolores Alvarado Hibbs
 General Counsel
 Texas Department of Agriculture
 Filed: July 3, 2013



Weights and Measures Enforcement Guidelines and Administrative Penalty and Sanction Matrix

The Texas Legislature, under Chapter 13 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and regulate weighing and measuring devices and metrological standards in this state. The department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, and to inspire consumer confidence. To achieve these goals, the department enforces a variety of weights and measures standards, specifications, prohibitions, or other requirements through

routine and risk-based inspection programs, complaint investigations, and other regulatory activities involving owners and operators (users) of weighing and measuring devices and metrological standards.

Department enforcement occurs through administration actions, including stop-sales and out-of-order tags, and by direct enforcement with monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative or direct enforcement action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 13 can be as high as \$10,000 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 13 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily-imposed maximum of \$5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each transaction may be considered a separate violation and, under certain circumstances, each unit of measure involved in a transaction also may be considered a separate violation. Given the wide variety of possible motor fuel transactions, the department cannot list all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Weights and Measures Enforcement Guidelines, including the Weights and Measures Penalty and Sanction Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 13 of the Code and rules adopted under that chapter, as published in Chapter 12 of Title 4 of the Texas Administrative Code (TAC). The guidelines have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staffs.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsections when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty.**

The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action, including information about recent calibration of noncompliant devices that may serve as a basis for reduction or rescission of an assessed penalty, before further legal action is taken to enforce the assessed penalty.

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 13 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 13 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 13 provision or applicable rule. "Strict liability" means that a violation occurs whether the person committing the violation intended to do so or not. The prohibition against "speeding" is an example of a strict liability violation of state law. See Texas Attorney General Opinion No. JC-0451 (January 14, 2002).
2. The prescribed penalties in the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing non-compliance with a Chapter 13 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.
3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.
4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.
5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct may be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single previous violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. Each business or individual that obtains a license with the department is assigned a client number. Each client then receives an account number for each location or group of locations required by law to obtain a separate license. These separate licenses have unique license numbers, also referred to as account numbers that are associated with the one client number. The client number is not a license number, but merely an internal tracking number tying related license/account numbers together for the efficient billing of regulatory fees and bulk issuance of license renewal forms. The department evaluates prior violations at the client or owner level only for those violations for which an automatic penalty enhancement is provided for repeat violations. All other violations are evaluated at the individual license or account level.

7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances. By law, each additional day a violation continues or occurs may be considered a separate violation for which a separate and additional penalty calculated under these guidelines will be assessed.

If the date of first occurrence cannot be determined for a violation of a continuing nature, the date of first occurrence for the violation will be the date the department first discovers the violation.

8. In determining whether a particular respondent has a prior violation, the department will review the three-year time period immediately preceding the date of the current violation to determine whether an order was issued during this period that either found the respondent committed the same or a similar violation. If such an order is found, then a prior violation exists.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any such penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing or negotiate a settlement with the department's enforcement staff that addresses the respondent's objections.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payment of an assessed penalty, absent an approved settlement, may be returned or retained and treated as a request for a hearing on the penalty amount.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty, waiver of penalty, or reduction of a penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which they are based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication. Generally, however, to the extent amendments to the guidelines would produce a more favorable result for a violator, the guidelines will be applied retroactively and prior to publication and to the extent such amendments would produce a less favorable result, the previous guidelines will be applied.

Special Note: Concurrent with amendments to these guidelines, the department has published, as a separate and parallel process, suspension and revocation guidelines that, in conjunction with statistical risk analysis and additional risk response inspections, are intended to identify and address most instances of habitual, repetitive, frequent, or egregious noncompliance. As a result, the department has amended the Weights and Measures Penalty and Sanction Matrix to remove those provisions designed to address the same situations, such as references to suspensions and revocations, a large number of automatic penalty increases for subsequent violations, and minimum penalty amounts for some violations. Changes to other department penalty guidelines to reflect the implementation of the suspension and revocation guidelines will follow as deemed necessary. Under **all** such guidelines, the department retains the discretion to depart from the guidelines whenever the available evidence indicates unique circumstances that demonstrate the need for a more or less harsh enforcement response.

Members of the regulated community, as well as the general public, should be aware that under state law the term "license" includes a permit, certificate, registration, and any other similar form of permission issued by a state agency and required by law. Any person holding a license from the department that is titled or referred to as a permit, certificate, registration, or by any other name is subject to all statutory provisions or agency rules applicable to department licensees in general. Such persons also will fall within the scope of those agency policies and guidelines, including these weights and measures enforcement guidelines that refer to licensees in general.

For purposes of these guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

These guidelines and matrix are effective July 1, 2013, and supersede the Weights and Measures Administrative Penalty Matrix as published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4161) for those violations committed on or after the date this matrix and guidelines are filed for publication.

A penalty described by this matrix may be increased if clear evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. Any such increase may include license suspension or revocation.

Violation	Penalty	Automatic Enhancement for Subsequent Offenses
Failure to use suitable device (use of not legal for trade devices).	\$250 for each device marked "Not Legal for Trade," written warning if unmarked	
Failure to permanently, plainly, and visibly mark the fill connection for a product storage tank and, if the connection is marked by means of a color code, to conspicuously display the code key at the place of business.	\$250	
Failure to operate device only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment; failure to operate equipment as it was designed to be used.	\$250 for each device improperly operated	
Failure of device to hold zero until product dispensing mechanism is engaged (aka, "pump jump").	\$100 for each device improperly maintained; or \$250 for each device improperly maintained, if 50% or more fail; or	
NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.		
Failure to position device properly (e.g. readout visible).	\$100 for each device improperly positioned	
Failure to maintain device in proper working order (maintenance of equipment) - the difference between delivered and displayed quantities falls outside of the applied tolerance range.	<ul style="list-style-type: none"> • 2x or greater, but less than 3x, in excess of tolerance in favor of the operator or owner of the device: \$250 for each device improperly maintained • 3x or greater, but less than 4x, in excess of tolerance in favor of the operator or owner of the device: \$500 for each device improperly maintained • 4x or greater in excess of tolerance in favor of the operator or owner of the device: \$1000 for each device improperly maintained 	
NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.		

<p>Failure to maintain device in proper working order (maintenance of equipment) - the displayed quantities of the delivered commodity deviate from true value (the quantities actually delivered) predominantly in favor of the device user (owner or operator).</p> <p>NOTES: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix. G-UR. 4.1 specifies "equipment in service" to be the basis for evaluating compliance with its requirements. Therefore, only operable devices are used in calculating the % of devices that deviate from true value in favor of the device owner.</p>	<ul style="list-style-type: none"> 60% - 80% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance); \$100 for each device found to measure or weigh in favor of the operator or owner of the device > 80% but < 100% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance); \$250 for each device found to measure or weigh in favor of the operator or owner of the device 100% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance); \$500 for each device found to measure or weigh in favor of the operator or owner of the device 	
<p>Failure to maintain device in proper working order (maintenance of equipment) - other.</p> <p>NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.</p>	<p>\$100 - \$500 for each device improperly maintained</p>	
<p>Failure to assist in testing operations by providing necessary equipment, accessories, or labor.</p>	<p>\$1,000 for each day during which the person refuses to assist in testing</p>	<p>\$2,500 for each day during which the person refuses to permit a test</p>
<p>Failure to place and maintain a security seal on a device adjustment mechanism designed to be sealed.</p>	<p>\$1,000 for each device without a properly maintained security seal</p>	<p>\$2,500 for each device without a properly maintained security seal</p>
<p>Failure to show all required information on the printed ticket issued from a device.</p>	<p>\$100 per noncompliant point-of-sale output device (if all output devices at a single location are affected because of a defect in a single controller for all such output devices, then penalty is per point-of-sale system)</p> <p>\$50 for each product for which the identity is not displayed</p> <p>\$50 for each product for which the unit price is not displayed</p>	
<p>Failure to display or post the product identity on a retail motor-fuel dispenser.</p>	<p>\$50 for each product for which the identity is not displayed</p>	
<p>Failure to display or post the unit price of a product on a retail motor-fuel dispenser.</p>	<p>\$50 for each product for which the unit price is not displayed</p>	

<p>False price advertisement (price verification).</p>	<p>For each overcharged item, \$150 plus item Overcharge Percentage (IOP) adjustment:</p> <p>IOP Adjustment Table</p> <table border="1"> <thead> <tr> <th>Overcharge Percentage</th> <th>Adjustment</th> </tr> </thead> <tbody> <tr> <td>< 10%</td> <td>\$0</td> </tr> <tr> <td>10% - 50%</td> <td>\$25</td> </tr> <tr> <td>51% - 150%</td> <td>\$50</td> </tr> <tr> <td>151% - 200%</td> <td>\$75</td> </tr> <tr> <td>201% - 300%</td> <td>\$100</td> </tr> <tr> <td>301% - 400%</td> <td>\$150</td> </tr> <tr> <td>> 400%</td> <td>\$200</td> </tr> </tbody> </table>	Overcharge Percentage	Adjustment	< 10%	\$0	10% - 50%	\$25	51% - 150%	\$50	151% - 200%	\$75	201% - 300%	\$100	301% - 400%	\$150	> 400%	\$200	<p>\$1,000 for each commodity whose weight or measure has been falsely represented.</p>
Overcharge Percentage	Adjustment																	
< 10%	\$0																	
10% - 50%	\$25																	
51% - 150%	\$50																	
151% - 200%	\$75																	
201% - 300%	\$100																	
301% - 400%	\$150																	
> 400%	\$200																	
<p>False representation of commodity weight or measure - standard weight or measure packages.</p>	<p>\$500 for each commodity whose weight or measure has been falsely represented</p>	<p>\$1,000 for each commodity whose weight or measure has been falsely represented.</p>																
<p>False representation of commodity weight or measure - random weight or measure packages.</p>	<p>\$500 for each commodity whose weight or measure has been falsely represented</p>	<p>\$1,000 for each commodity whose weight or measure has been falsely represented</p>																
<p>False representation of commodity weight or measure - bulk commodities, seller furnishing weight or measure, other than retail motor fuel dispenser "pump jumps" (see above).</p>	<p>\$500 for each transaction involving a false representation</p>	<p>\$1,000 for each transaction involving a false representation</p>																
<p>False representation of commodity weight or measure - bulk commodities, buyer furnishing weight or measure.</p>	<p>\$500 for each transaction involving a false representation</p>	<p>\$1,000 for each transaction involving a false representation</p>																
<p>Violation of a stop-sale order.</p> <p>NOTE: Each individual package or item sold in violation of the stop-sale order constitutes a separate violation. A penalty may be assessed for violation of the order as a whole or for each individual violation of the order, as specified in the penalty descriptions.</p>	<p>\$1000 for each order violated</p>	<p>\$2,500 for each order violated plus \$50 for each additional individual package or item sold or distributed in violation of the stop-sale order.</p>																
<p>Failing or refusing to permit test of weighing or measuring device.</p>	<p>For-Cause Test: \$1,000 for each day during which the person fails or refuses to permit a test</p> <p>Routine Test: \$250 for each day during which the person fails or refuses to permit a test</p>	<p>\$2,500 for each day during which the person refuses to permit a test</p>																
<p>Hindering department personnel in the performance of official duties.</p>	<p>\$1,000 for each day during which the person acts to hinder department personnel</p>	<p>\$2,500 for each day during which the person acts to hinder department personnel</p>																

Unauthorized removal or defacement of an out-of-order tag or device.	\$500 for each tag or device removed or defaced without authorization	\$1,000 for each tag or device removed without authorization
Use or sale of an incorrect weight or measure.	\$500 for each use or sale;	\$1,000 for each use or sale;
Improper disposal of a condemned device.	\$250 for each false weight or measure in possession	\$500 for each false weight or measure in possession
Intentionally or knowingly issuing a false certificate of weight or measure.	\$250 for each condemned weight or measure	\$500 for each condemned weight or measure
Intentionally or knowingly issuing a certificate of weight or measure without authority.	\$2500 for each false certificate	\$5,000 for each false certificate
Failure to register device (new business).	\$500 for each false certificate	\$1,000 for each false certificate
Failure to register additional devices.	\$100 for each device (penalty is in addition to any registration and late fees due)	
Failure to register a device as the correct type before the end of a 30 day penalty-free period which begins to run the day after the person operating the devices is notified by the department that the device is not registered as the correct type.	\$100 for each device not registered (penalty is in addition to any registration and late fees due)	
Operating a device with a registration that is expired for a time period less than one year.	\$50 for each device not properly registered Exception: Above per-device penalties shall be doubled if due to the improper registration TDA did not have the appropriate testing equipment on hand at the time the device was first inspected (penalty is in addition to any registration fees due)	
Operating a device with a registration that is expired for a time period of one year or more.	\$50 for each device with a registration that is expired for a time period of less than one year (penalty is in addition to any registration fees due, including any late fees)	
Operating a device whose use has been prohibited by the department under Texas Agriculture Code, §13.1011.	\$500 for each device with a registration expired for a time period of one year or more (penalty is in addition to any registration and late fees due)	\$2,500 for each device whose use has been prohibited for each day the device is operated
Failure to prominently post a Weights and Measures Certificate of Registration at the registered location so as to be in plain sight of, legible to, and physically accessible to the average consumer of weighed or measured products sold or offered for sale at the registered location.	\$1,000 for each device whose use has been prohibited for each day the device is operated	
Failure to affix and keep affixed a sticker or other notice required by rule to be affixed by the operator or owner of the device.	\$500	
	\$250 for each sticker or other required notice not affixed or kept affixed	

Unauthorized removal of a sticker or notice.	\$250 for each unauthorized removal	\$500 for each device IDA-affixed seal, sticker, or other notice
Failure to submit a service report in a timely manner - new installations.	\$5,000 for each outlet	
Failure to submit a service report in a timely manner - other than new installations. NOTE: A report is not "submitted" until it has been received by the department.	\$250 if service report submitted within 30 days after date of notice of penalty; \$1000 if service report is not submitted within 30 days	\$500 if service report submitted within 30 days after date of notice of penalty; \$2500 if service report is not submitted within 30 days
Submission of a service report that is incomplete, inaccurate, or which contains false information. NOTE: An unsigned service report is incomplete; each combination of an out-of-order report # and associated device ID# not reported, inaccurately reported, incompletely reported, or falsely reported constitutes a separate missing, incomplete, inaccurate, or false item.	\$500 for each report that contains an incomplete, inaccurate, or false item plus \$100 for each additional item in the report that is missing, incomplete, inaccurate, or false	\$1,000 for each report that contains an incomplete, inaccurate, or false item plus \$250 for each additional item in the report that is missing, incomplete, inaccurate, or false
Failure to perform an adequate test or service of a device.	\$250 for each device inadequately tested or serviced	\$1,000 for each device inadequately tested or serviced
Failure to obtain or renew a license - Licensed Service Company.	\$1,000	
Failure to obtain or renew a registration - Registered Technician.	\$1,000	
Operating with a license expired by one year or more - Licensed Service Companies and Registered Technicians.	\$1,000 (penalty is in addition to any registration and late fees due)	
Placing a device into service, removing an out-of-order tag or performing inspections of LPG meters or ranch scales without being employed by a licensed service company - Registered Technicians.	\$1,000	
Failure to use annually certified test standards.	\$2,500	\$5,000
Failure to retain for two years a copy of an issued official certificate.	\$500	\$1,000
Failure to comply with any requirement (of Chapter 13, Texas Agriculture Code, or department rules adopted under the authority of that chapter) which is not expressly described in this matrix.	\$50 - \$5,000 per outlet or device	

¹A penalty is assessed for each overcharged item. An overcharged item is one whose price on the final receipt printed during the inspection checkout is higher than the lowest advertised price for that item. The item overcharge percentage is determined by taking the absolute value of the difference between the price charged and the lowest advertised price (the correct price), dividing the result by the correct price, and rounding to the nearest whole percent by adding 0.5% and truncating any decimal remainder. The amount of the upward adjustment is then determined by consulting the IOC Adjustment Table in the violation column of the matrix. The maximum penalty for any one overcharged item is \$5,000. The total penalty to be assessed is the sum of the penalties for all overcharged items.

TRD-201302800
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 3, 2013

◆ ◆ ◆
Office of the Attorney General

**Texas Water Code and Texas Health and Safety Code
Settlement Notice**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *The State of Texas v. Gulf Chemical & Metallurgical Corporation*; Cause No. D-1-GV-09000228 in the 261st Judicial District of Travis County, Texas.

Nature of Defendants' Operations: Gulf Chemical & Metallurgical Corporation recycles metal from spent petroleum catalysts and produces ferroalloys in Brazoria County, Texas. Claims resolved include allegations that Defendant improperly discharged emissions and wastes in violation of applicable permits and Texas rules and regulations including the Texas Solid Waste Disposal Act and the Texas Clean Air Act.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction orders Gulf Chemical & Metallurgical Corporation to pay \$7,500,000.00 in civil penalties to the State. This amount includes \$300,000.00 in attorney's fees and costs of court. In addition, the Agreed Final Judgment and Permanent Injunction requires Gulf Chemical & Metallurgical Corporation to bring its operations into compliance with the applicable permits and Texas statutes and regulations.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Jennifer S. Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-9917, facsimile (512) 370-9830. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201302768
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 2, 2013

◆ ◆ ◆
Comptroller of Public Accounts

Notice of Contract Amendments

The Comptroller of Public Accounts (Comptroller) has entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services (Contracts) resulting from Comptroller's Request for Quali-

cations 203b (RFQ 203b). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 203b was published in the April 13, 2012, issue of *Texas Register* (37 TexReg 2772). Notice of Awards was published in the August 17, 2012, issue of *Texas Register* (37 TexReg 6345).

Amendments No. 1 to their respective Contracts have been entered into with the following persons or firms:

Delores A. Nornberg, 7518 Briecesco Drive, Corpus Christi, Texas 78414, is extended by Amendment No. 1.

Thomas W. Gay, 2803 Ira Young Drive, Apt. 3221, Temple, Texas 76504, is extended by Amendment No. 1.

Taygor Associates, LLC, 1124 Native Garden Cove, Round Rock, Texas 78681, is extended by Amendment No. 1.

Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003, is extended by Amendment No. 1.

Cynthia Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021, is extended by Amendment No. 1.

Sam W. Armstrong, PC, 27403 Manor Falls Lane, Fulshear, Texas 77441, is extended by Amendment No. 1.

Texas Tax Consulting Group, LC, 6116 Ayers Street, Suite 2C, Corpus Christi, Texas 78415, is extended by Amendment No. 1.

Nedzra J. Ward, 11403 Kay Lane, Pearland, Texas 77584-7270, is extended by Amendment No. 1.

Gordon Wheeler, 8410 Neff Street, Houston, Texas 77036, is extended by Amendment No. 1.

The original term of the Contracts was September 1, 2012 through August 31, 2013. Amendment No. 1, the subject of this notice, extends the term of the Contracts through August 31, 2014, with (1) one option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201302758
Robin Reilly
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 1, 2013

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Notice of Contract Amendments

The Comptroller of Public Accounts (Comptroller) has entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services (Contracts) resulting from Comptroller's Request for Qualifications 201d (RFQ 201d). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 201d was published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2524). Notice of Awards was published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6530).

Amendments No. 2 to their respective Contracts have been entered into with the following persons or firms:

Willie L. Sullivan, Jr., 4530 Brookren Court, Pearland, Texas 77584, is extended by Amendment No. 2.

State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053, is extended by Amendment No. 2.

The original term of the Contracts was September 1, 2011, through August 30, 2013. Amendment No. 2, the subject of this notice, extends the term of the Contracts through August 31, 2014, with no option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201302759

Robin Reilly

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 1, 2013



Notice of Contract Awards

The Texas Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the award of innovative energy demonstration grants as a result of Request for Applications (RFA) No. IED-G1-2013.

Thirteen (13) grants were awarded to the following:

1. Cooper ISD, 250 W. McKinney, Cooper, Texas 75432. The total amount of the grant is not to exceed \$199,000.00. The term of the grant agreement is May 31, 2013, through August 31, 2013.
2. Avery ISD, 150 San Antonio Street, Avery, Texas 75554. The total amount of the grant is not to exceed \$230,000.00. The term of the grant agreement is June 7, 2013, through August 31, 2013.
3. Texas Tech University, Box 51035, 349 Administration Building, Lubbock, Texas 79409-1035. The total amount of the grant is not to exceed \$230,000.00. The term of the grant agreement is May 29, 2013, through August 31, 2013.
4. Liberty-Eylau ISD, 2901 Leopard, Texarkana, Texas 75501. The total amount of the grant is not to exceed \$116,000.00. The term of the grant agreement is May 29, 2013, through August 31, 2013.
5. Texarkana ISD, 4241 Summerhill Road, Texarkana, Texas 75503. The total amount of the grant is not to exceed \$116,000.00. The term of the grant agreement is May 29, 2013, through August 31, 2013.
6. City of Brownsville, 1001 E. Elizabeth, Brownsville, Texas 78520. The total amount of the grant is not to exceed \$235,000.00. The term of the grant agreement is June 28, 2013, through August 31, 2013.
7. Texas State University - San Marcos, 601 University Dr., San Marcos, Texas 78666. The total amount of the grant is not to exceed \$77,649.00. The term of the grant agreement is May 30, 2013, through August 31, 2013.
8. Brownsville ISD, 1900 E. Price Road, Brownsville, Texas 78521. The total amount of the grant is not to exceed \$240,000.00. The term of the grant agreement is June 20, 2013, through August 31, 2013.
9. Northwest ISD, P.O. Box 77070, Fort Worth, Texas 76177. The total amount of the grant is not to exceed \$80,600.00. The term of the grant agreement is May 31, 2013, through August 31, 2013.
10. Taylor ISD, 602 W. 12th Street, Taylor, Texas 76574. The total amount of the grant is not to exceed \$112,000.00. The term of the grant agreement is June 10, 2013, through August 31, 2013.

11. Presidio ISD, P.O. Box 1401, Presidio, Texas 79845. The total amount of the grant is not to exceed \$232,000.00. The term of the grant agreement is May 30, 2013, through August 31, 2013.

12. Archer City ISD, Box 926, Archer City, Texas 76351. The total amount of the grant is not to exceed \$90,000.00. The term of the grant agreement is May 31, 2013, through August 31, 2013.

13. Texas State Technical College Harlingen, 1902 N Loop 499, Harlingen, Texas 78550. The total amount of the grant is not to exceed \$235,500.00. The term of the grant agreement is June 28, 2013, through August 31, 2013.

The notice of request for applications was published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 1020).

TRD-201302777

Jason C. Frizzell

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 2, 2013



Notice of Request for Proposals

Pursuant to Chapter 403, Subchapter Q and Chapter 2254, Subchapter A of the Texas Government Code, the Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 204c ("RFP") from qualified, independent certified public accountants to assist Comptroller in performing financial and performance audits and policy compliance attestation services for the Texas Conservation Plan for the Dunes Sagebrush Lizard Project, a comprehensive Endangered Species Act of 1973 conservation plan for the dunes sagebrush lizard. The selected contractor or contractors (Contractor), if any, will provide the requested services to the Comptroller to complete the Audits. The successful respondent will be expected to begin performance of the contract on or after October 11, 2013.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, July 12, 2013, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, July 26, 2013. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, August 9, 2013, Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of the RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. CT, on Friday, August 23, 2013. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision on award(s). The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any

RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - July 12, 2013, after 10:00 a.m. CT; Questions Due July 26, 2013, 2:00 p.m. CT; Official Responses to Questions posted - August 9, 2013, or as soon as thereafter practical; Proposals Due - August 23, 2013, 2:00 p.m. CT; Contract Execution - October 11, 2013, or as soon thereafter as practical; Commencement of Work - October 11, 2013, or as soon thereafter as practical. Revisions to this schedule, if any, will be posted as revisions to the notice of issuance of this RFP.

TRD-201302797

Robin Reilly

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 3, 2013



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 Financial Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/08/13 - 07/14/13 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 07/08/13 - 07/14/13 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 07/01/13 - 07/31/13 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 07/01/13 - 07/31/13 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-201302755

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 1, 2013



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency 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 August 12, 2013. 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 August 12, 2013**. 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: Atmos Energy Corporation; DOCKET NUMBER: 2013-0412-AIR-E; IDENTIFIER: RN100542661; LOCATION: Henrietta, Clay County; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O-0443, General Operating Permit Number 514, Site-wide requirements Number (b)(2), by failing to submit a deviation report within 30 days following the end of the reporting period in which deviations occurred; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (806) 353-9251.

(2) COMPANY: Edinburg Consolidated Independent School District; DOCKET NUMBER: 2013-0155-PST-E; IDENTIFIER: RN103773354; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank (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: \$4,500; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2012-2572-AIR-E; IDENTIFIER: RN100216761; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit (FOP) Number O1419, Special Terms and Conditions (STC) Number 1.A., 40 Code of Federal Regulations (CFR) §60.565(k), 30 TAC §101.20(1) and §122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit 40 CFR Part 60 Subpart DDD semiannual reports; and FOP Number O1419, STC Number 1.A., 30 TAC §115.725(d)(3) and §122.143(4), and THSC, §382.085(b), by failing to operate the Continuous Emission Monitoring System at least 95% of the time when the flare is operational; PENALTY: \$17,848; Supplemental Environmental Project offset amount of \$7,139 applied to Houston - Galveston Area Emission Reduction Credit Organizations Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: FATTY CHEM BY-PRODUCTS, INCORPORATED; DOCKET NUMBER: 2012-2546-MLM-E; IDENTIFIER: RN105796924; LOCATION: Los Fresnos, Cameron County; TYPE OF FACILITY: rendering facility authorized to handle grease trap waste; RULE VIOLATED: 30 TAC §312.144(f), by failing to prominently mark all discharge valves and ports on all closed vehicles, tanks, or containers used to transport liquid wastes; and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial wastewater; PENALTY: \$1,813; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: FEDERAL EXPRESS CORPORATION dba Federal Express Grand Prairie; DOCKET NUMBER: 2013-0442-PST-E; IDENTIFIER: RN100704600; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: fleet refueling; 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: \$2,813; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2013-0164-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and §122.143(4), Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, Federal Operating Permit Number O1317, Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085, by failing to prevent unauthorized emissions. Since these emissions event could have been prevented through better maintenance practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: \$21,563; Supplemental Environmental Project offset amount of \$8,625 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Flower Mound Food & Fuel, LLC; DOCKET NUMBER: 2012-2679-PST-E; IDENTIFIER: RN101751824; LOCATION: Flower Mound, Denton 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: \$2,813; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: J Ferg Coatings, LLC; DOCKET NUMBER: 2013-0455-AIR-E; IDENTIFIER: RN106597396; LOCATION: Wolfforth, Lubbock County; TYPE OF FACILITY: residential and commercial sandblasting and coating; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating an outdoor dry abrasive cleaning and non-enclosed surface coating site; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(9) COMPANY: JACKSON OIL COMPANY; DOCKET NUMBER: 2013-0360-PST-E; IDENTIFIER: RN101854149; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify

that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: \$1,107; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: JAYVIK AUTO SYSTEMS, INC. dba Speedee Oil Change & Tune Up; DOCKET NUMBER: 2013-0255-PST-E; IDENTIFIER: RN100539923; LOCATION: Carrollton, Denton County; TYPE OF FACILITY: oil change and lube facility; RULE 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 a petroleum underground storage tank (UST); 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) 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 also by failing to provide release detection for the product piping associated with the UST system; PENALTY: \$5,024; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: JIM KELLY'S ICE TEE, L.L.C.; DOCKET NUMBER: 2012-1937-PWS-E; IDENTIFIER: RN101253334; LOCATION: Houston, Harris County; TYPE OF FACILITY: restaurant with a public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to report to the executive director the results for sexennial metals monitoring for the reporting period from January 1, 2004 - December 31, 2009; 30 TAC §290.106(e), by failing to report to the executive director the results for triennial minerals monitoring for the reporting periods of January 1, 2005 - December 31, 2007 and January 1, 2008 - December 31, 2010; 30 TAC §290.106(e), by failing to report to the executive director the results for annual nitrate/nitrite monitoring for the reporting periods of January 1, 2007 - December 31, 2010; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of April and May 2012 and failing to provide public notice of the failure to sample for the month of April 2012; PENALTY: \$1,206; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Johnson Oil Company also known as CINCO J., INCORPORATED; DOCKET NUMBER: 2013-0385-PST-E; IDENTIFIER: RN106518582; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: \$1,038; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: KSN Investments, LLC dba Richland Texaco; DOCKET NUMBER: 2013-0398-PST-E; IDENTIFIER: RN102752730; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$3,923; ENFORCEMENT COORDINATOR: Michael Meyer, (512)

239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: L H Devco, Incorporated; DOCKET NUMBER: 2013-0680-WQ-E; IDENTIFIER: RN106532187; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §81.25(a)(4) and 40 Code of Federal Regulations §122.26, by failing to obtain authorization to discharge storm water associated with construction activities under Texas Pollutant Discharge Elimination System General Permit Number TXR150000 prior to commencement of construction activities; PENALTY: \$938; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: L.F. Martinez, Incorporated dba Fer's Alignment, Brakes and Mufflers; DOCKET NUMBER: 2012-0702-AIR-E; IDENTIFIER: RN106343460; LOCATION: Garland, Dallas County; TYPE OF FACILITY: an automobile repair shop that includes a vehicle safety and emission certification station; RULE VIOLATED: 30 TAC §114.50(d)(1) and (2) and Texas Health and Safety Code, §382.085(b), by failing to prevent the issuance of a vehicle inspection report when all applicable air pollution emissions control related requirements of the annual vehicle emissions and safety inspection requirements were not completely met; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Laguna Madre Water District; DOCKET NUMBER: 2013-0438-PWS-E; IDENTIFIER: RN102675501; LOCATION: Port Isabel, Cameron County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.106(e), by failing to timely provide the results of nine-year sampling for asbestos levels to the executive director for the January 1, 2004 - December 31, 2012 monitoring period; PENALTY: \$442; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Linden-Kildare Consolidated Independent School District; DOCKET NUMBER: 2013-0540-PST-E; IDENTIFIER: RN101795201; LOCATION: Linden, Cass County; TYPE OF FACILITY: fleet refueling; 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 system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Lone Star Ace Investments, LLC dba Quickway Food Store; DOCKET NUMBER: 2012-2499-PST-E; IDENTIFIER: RN101741213; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days

between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Mavrick Development Corporation dba Ferguson Food Mart; DOCKET NUMBER: 2012-2606-PST-E; IDENTIFIER: RN102159431; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$2,988; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Moe Foshat and Hamid Fosshat dba Bastrop Travel Center; DOCKET NUMBER: 2013-0146-PST-E; IDENTIFIER: RN104366760; LOCATION: Bastrop, Bastrop 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), also by failing to provide release detection for the pressurized piping associated with 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: \$4,880; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(21) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2012-1628-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1386, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16A, and Flexible Permit Numbers 8404 and PSDTX1062M1 Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions. Since this emissions event could have been avoided through better operational practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O3387, GTC and STC Number 18, and Air Permit Numbers 6056 and PSDTX1062M1, SC Numbers 1 and 5, by failing to prevent unauthorized emissions; PENALTY: \$28,688; Supplemental Environmental Project offset amount of \$11,475 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: St. David's Healthcare Partnership, L.P., LLP; DOCKET NUMBER: 2013-0435-EAQ-E; IDENTIFIER: RN103008231; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: healthcare facility; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing construction of a regulated activity on the recharge zone; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

TRD-201302764



Enforcement Orders

A field citation was entered regarding Cresson Crossroads LLC, Docket No. 2012-0863-WR-E on June 10, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRAILSWEST MOBILE HOME PARK, LLC, Docket No. 2012-1117-PWS-E on June 10, 2013 assessing \$976 in administrative penalties with \$194 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Harris County Municipal Utility District No. 36, Docket No. 2012-2161-MWD-E on June 10, 2013 assessing \$1,063 in administrative penalties with \$212 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 2430 Pine Investments, Inc. dba Cheris Food Mart, Docket No. 2012-2167-PST-E on June 10, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammed Haider dba K N S Stops, Docket No. 2012-2178-PST-E on June 10, 2013 assessing \$3,751 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jon Zertuche, Docket No. 2012-2258-LII-E on June 10, 2013 assessing \$952 in administrative penalties with \$190 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 TA Operating LLC dba Petro Stopping Center 307, Docket No. 2012-2269-PST-E on June 10, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CENTER SERVING PERSONS WITH MENTAL RETARDATION dba Willow River Farms, Docket No. 2012-2273-PWS-E on June 10, 2013 assessing \$525 in administrative penalties with \$105 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAHIL MERCHANT, INC. dba T Mart, Docket No. 2012-2277-PST-E on June 10, 2013 assessing \$2,927 in administrative penalties with \$585 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 Zaid, LLC dba Stop & Shop Food Mart, Docket No. 2012-2375-PST-E on June 10, 2013 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREEN EXPRESS STORES INC. dba US Express 1, Docket No. 2012-2377-PST-E on June 10, 2013 assessing \$6,663 in administrative penalties with \$1,332 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 GRAMSN FUELS INC dba Union Bower Mart, Docket No. 2012-2378-PST-E on June 10, 2013 assessing \$6,744 in administrative penalties with \$1,348 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 Billy Clouse dba Gas-N-Go, Docket No. 2012-2443-PST-E on June 10, 2013 assessing \$2,888 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OCHO NLSS MG CORPORATION dba Sams Food Mart 4, Docket No. 2012-2474-PST-E on June 10, 2013 assessing \$4,111 in administrative penalties with \$822 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 RACETRAC PETROLEUM, INC., Docket No. 2012-2503-PST-E on June 10, 2013 assessing \$7,500 in administrative penalties with \$1,500 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, Manuel Martinez dba Economy Store, Docket No. 2012-2516-PST-E on June 10, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Star Concrete, Inc., Docket No. 2012-2530-PST-E on June 10, 2013 assessing \$2,954 in administrative penalties with \$590 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rite Enterprises, Inc. dba Delco Country Store, Docket No. 2012-2544-PST-E on June 10, 2013 assessing \$2,942 in administrative penalties with \$588 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 Dharell G. Campbell, Jr., Docket No. 2012-2545-WOC-E on June 10, 2013 assessing \$2,750 in administrative penalties with \$550 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 AADARSH BUSINESS INC. dba Red Rock Grocery, Docket No. 2012-2561-PST-E on June 10, 2013 assessing \$6,130 in administrative penalties with \$1,226 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saakshi Inc dba Ector Food Mart, Docket No. 2012-2563-PST-E on June 10, 2013 assessing \$3,502 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A P G & Z, INC. dba McKinney Food Store, Docket No. 2012-2566-PST-E on June 10, 2013 assessing \$3,750 in administrative penalties with \$750 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 Hamilton Pool H2O LLC, Docket No. 2012-2576-PWS-E on June 10, 2013 assessing \$721 in administrative penalties with \$144 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-

2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Toepperwein Food Mart, Inc. dba First Stop, Docket No. 2012-2590-PST-E on June 10, 2013 assessing \$4,618 in administrative penalties with \$923 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHNSON-WHITE & ASSOCIATES, INC. dba White's Exxon, Docket No. 2012-2605-PST-E on June 10, 2013 assessing \$6,881 in administrative penalties with \$1,376 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAKNOJIA ROSHAN INVESTMENT, LLC dba Hammond Kountry Store, Docket No. 2012-2618-PST-E on June 10, 2013 assessing \$2,942 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Dallas Independent School District, Docket No. 2012-2635-PST-E on June 10, 2013 assessing \$3,375 in administrative penalties with \$675 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 ANG NEEMA & ANG MARIA INC dba Quick Track 11, Docket No. 2012-2637-PST-E on June 10, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KBR INVESTMENT INC. dba Super Stop 22, Docket No. 2012-2660-PST-E on June 10, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stripes LLC dba Stripes 102, Docket No. 2012-2668-PST-E on June 10, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M L S S INC dba Sunny Food Mart, Docket No. 2012-2669-PST-E on June 10, 2013 assessing \$3,881 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ES. TEHUETLAN LLC dba Fast Stop, Docket No. 2012-2686-PST-E on June 10, 2013 assessing \$2,813 in administrative penalties with \$562 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 City of Gatesville, Docket No. 2012-2717-PST-E on June 10, 2013 assessing \$3,750 in administrative penalties with \$750 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 Sambour Mam dba Sunny Food Mart, Docket No. 2012-2728-PST-E on June 10, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patisu Properties, Inc. dba The Shade Tree, Docket No. 2013-0023-PST-E on June 10, 2013 assessing \$2,942 in administrative penalties with \$588 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 SARVODAY ENTERPRISES LLC dba Times Market, Docket No. 2013-0078-PST-E on June 10, 2013 assessing \$3,881 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Copperas Cove Independent School District, Docket No. 2013-0087-PST-E on June 10, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B.C.A.H Property Management, LLC and ABISB, LP, Docket No. 2013-0103-EAQ-E on June 10, 2013 assessing \$2,925 in administrative penalties with \$585 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Pavlis dba Exxon RS 64935, Docket No. 2013-0114-PST-E on June 10, 2013 assessing \$2,942 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAY HUFFINES CHEVROLET INC., Docket No. 2013-0156-PST-E on June 10, 2013 assessing \$3,956 in administrative penalties with \$791 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAC-N-PAC STORES, INC. dba Sac N Pac 504, Docket No. 2013-0157-PST-E on June 10, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AA & MM INTERNATIONAL, INC. dba Amburn Food Mart, Docket No. 2013-0203-PST-E on June 10, 2013 assessing \$2,152 in administrative penalties with \$430 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Mahendrabhai B. Patel dba Superette Food Mart, Docket No. 2013-0443-PST-E on June 10, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tim J. Cox, Docket No. 2013-0512-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

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.

A field citation was entered regarding Hoa Tran dba Corner Stop Food Mart, Docket No. 2013-0545-PST-E on June 10, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Coastway, Inc. dba Kwik Stop 2, Docket No. 2013-0546-PST-E on June 10, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Quentin Wade Banister, Docket No. 2013-0590-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

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.

A field citation was entered regarding Quentin Wade Banister, Docket No. 2013-0605-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

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.

A field citation was entered regarding City of Athens, Docket No. 2013-0612-WQ-E on June 10, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Athens, Docket No. 2013-0613-WQ-E on June 10, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Michael Rohe, Docket No. 2013-0614-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

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.

A field citation was entered regarding Joey D. Pace, Docket No. 2013-0651-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Bradley E. Pennington, Docket No. 2013-0658-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

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.

A field citation was entered regarding Lyle B. Murphey, Docket No. 2013-0659-WOC-E on June 10, 2013 assessing \$175 in administrative penalties.

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.

TRD-201302791

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2013



Notice of Deletion of the ArChem/Thames Chelsea State Superfund Site from the Texas Superfund Registry

The executive director of the Texas Commission on Environmental Quality (TCEQ) is issuing this notice of deletion of the ArChem/Thames Chelsea State Superfund site (the site) from the Texas Superfund Registry. The Texas Superfund Registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was proposed for listing on the Texas Superfund Registry in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3413). The site, including all land, structures, appurtenances, and other improvements, is approximately ten acres and is located at 13103 Conklin Lane, Houston, Harris County, Texas. The site includes any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the facility.

The site is a former specialty chemical manufacturing facility where a wide range of chemicals and catalysts were used in the manufacturing and processing operations. The facility operated from 1961 until 1991. Operations ceased after the Thames Chelsea Company USA abandoned the site. The Texas Water Commission (a predecessor of TCEQ), the United States Environmental Protection Agency, and some Potentially Responsible Parties performed removal actions in the 1990s to address the immediate concerns relating to the chemicals stored in drums and aboveground storage tanks.

The structures left at the abandoned site included an office and warehouse buildings, concrete foundations at the former processing areas, a sludge drying bed, two land farm areas, and containment areas associated with the former aboveground tanks. Two surface impoundments containing wastewater from the former operations were located at the northeastern portion of the site. In addition, pallet piles, metal scraps, and debris from demolition activities were strewn throughout the facility.

The Remedial Investigation conducted by the TCEQ identified the chemicals of concern in soils and sediments at the site including metals (antimony, mercury, and lead), volatile organic compounds (benzene, toluene, and tetrahydrofuran), and semi-volatile organic compounds (2-nitroaniline and furfural). The groundwater at the site was designated as a Class 3 groundwater resource based on the yield and did not contain chemicals of concern at concentrations above applicable protective concentration levels.

The selected remedy for the contaminated surface soil and sediment based on the Feasibility Study was excavation and offsite disposal of the contaminated soils followed by backfilling with clean soil and vegetative cover. The impoundment water was filtered and treated by an activated carbon filter before being discharged into a flood control ditch located south of the site. The office and warehouse buildings, concrete foundations, and containment structures remain, but demolition debris was removed during the Remedial Action.

The TCEQ started the Remedial Action in September 2010 and completed all remedial activities in March 2011. The site has been remediated to cleanup standards based on Texas Risk Reduction Program Protective Concentration Levels for commercial/industrial land use.

In accordance with 30 Texas Administrative Code §335.344(b), the executive director held a public meeting to receive comments on the intended deletion of the site on August 2, 2012, at the San Jacinto College - South Campus, 13735 Beamer Road, Room S-12.101 (Kaleidoscope Room), Houston, Texas. No comments regarding the proposed deletion were received at the public meeting. The public file, including a transcript of the public meeting, may be viewed during regular business hours at the TCEQ's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753 or (512) 239-2920. Fees are charged for photocopying file information.

Pursuant to 30 Texas Administrative Code §335.344(c), the executive director has determined that due to the removal and remedial actions that have been performed, the site no longer presents an imminent and substantial endangerment to public health and safety or the environment. In accordance with §361.188(d) of the Texas Health and Safety Code, a notice will be filed in the real property records of Harris County, Texas, stating that the site has been deleted from the Texas Superfund Registry and that the site is not appropriate for residential use.

All inquiries regarding the deletion of the site should be directed to Mr. John Flores, Community Relations, at (800) 633-9363.

TRD-201302761

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 2, 2013



Notice of Water Quality Applications

The following notices were issued on June 21, 2013 through June 28, 2013.

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

CARGILL MEAT SOLUTIONS CORPORATION which operates the Cargill Meat Solutions Plainview Beef Plant, a cattle slaughter house producing boxed beef and other by-products, has applied for a major amendment to Texas Land Application Permit No. WQ0001463000 to: increase the area irrigated from 1,480 acres to 2,765 acres; recalculate nitrogen loading rates per crop; revise the irrigation plan including well buffer exceptions; apply consistent annual reporting requirements due during January; and clarify wastestreams. The current permit authorizes the disposal of packing plant process wastewater from cattle slaughtering and rendering operations and miscellaneous wastewaters (utility wastewater, wash waters, domestic wastewater, and process area stormwater runoff) via irrigation of various crops at crop applicable loading rates and a hydraulic application rate that shall not exceed 2.0 acre-feet per acre irrigated per year (acre-feet/acre/year); and hide processing wastewater and other high salt concentrated wastewater via total evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal sites are located east of Interstate Highway (IH) 27, adjacent to and east of the railroad tracks, approximately three miles north of the intersection of business IH 27 with 24th Street, northeast of the City of Plainview, Hale County, Texas.

CITY OF BIG LAKE has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No.

WQ0010038001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 350,000 gallons per day to a daily average flow not to exceed 525,000 gallons per day. The facility is located at 1340 U.S. Highway 67, approximately 530 feet south of U.S. Highway 67, approximately 1.14 miles east of the intersection of U.S. Highway 67 and the State Highway 137 in Reagan County, Texas 76932.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010173001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,800,000 gallons per day. The facility is located at 4900 Nebraska Street on the north side of Dickinson Bayou between the Galveston, Houston and Henderson Railroad and Nebraska Street in the City of Dickinson, in Galveston County, Texas 77539.

CITY OF WEST has applied for a major amendment to TPDES Permit No. WQ0010544001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 450,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 2,000 feet northeast of the intersection of Farm-to-Market Road 2311 and Farm-to-Market Road 2114 in the City of West in McLennan County, Texas 76691.

CITY OF GALVESTON has applied for a renewal of TPDES Permit No. WQ0010688005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located approximately 4.5 miles north of the San Luis Bridge and 1,900 feet west of San Luis Pass Road (Farm-to-Market Road 3005) in Galveston County, Texas 77553.

THE CITY OF CHINA has applied for a renewal of TPDES Permit No. WQ0012104001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 228,000 gallons per day. The facility is located adjacent to South China Road and approximately 1.5 miles south of US Highway 90 in Jefferson County, Texas 77613.

SAN JACINTO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0012597001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,800,000 gallons per day. The facility is located at 5402 Research Forest Drive, The Woodlands, approximately 2,000 feet northwest of the confluence of Bear Branch and Panther Branch, approximately 3.5 miles south of the intersection of Farm-to-Market Road 1488 and Interstate Highway 45 in Montgomery County, Texas 77381.

ALGONQUIN WATER RESOURCES OF TEXAS, LLC has applied for a major amendment to Texas Commission on Environmental Quality Permit No. WQ0013849001 to authorize a change in the method of effluent disposal from irrigation to discharge into waters of the state. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation system with a minimum area of 72,000 acres of non-public access grass land. The facility is located approximately 1,250 feet north of the intersection of State Highway 155 and Farm-to-Market Road 2661 in Smith County, Texas 75762.

RICETEC, INC has applied for a renewal of TPDES Permit No. WQ0014068001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 1925 Farm-to-Market Road 2917, Alvin, approximately 2,640 feet north of the intersection of Farm-to-Market 2917 and Farm-to-Market Road 2403 in Brazoria County, Texas 77511.

GULF COAST UTILITY CO., INC. has applied for a renewal of TPDES Permit No. WQ0014497001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located 6,500 feet southwest of intersection of State Highway 6 and State Highway 288, approximately 1,000 feet south of Brazoria County Road in Brazoria County, Texas 77512.

SOUTH CENTRAL WATER COMPANY a water and wastewater utility company, has applied for a renewal of TPDES Permit No. WQ0014610001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day. The facility will be located approximately 1.75 miles southeast of the intersection of Farm-to-Market Road 2920 and Telge Road in Harris County, Texas 77377.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0014650001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 16702 West Lake Houston Parkway, approximately 1.8 miles south and 0.2 mile west of the intersection of Farm-to-Market Road 1960 and West Lake Houston Parkway, Humble, in Harris County, Texas 77346.

NI AMERICA TEXAS DEVELOPMENT, LLC has applied for a renewal of TPDES Permit No. WQ0014879001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located approximately 1 mile northwest of the intersection of State Highway 6 and Farm-to-Market Road 2154 in Brazos County, Texas 77868.

HONG BICH CHAU has applied for a renewal of TPDES Permit No. WQ0014961001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility will be located at 14100 Laterna Lane, on the north side of Laterna Road, approximately 180 feet west of the intersection of Laterna Lane and Sugarland-Howell Road in Harris County, Texas 77083.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed TPDES Permit No. WQ0015079001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility will be located 1,500 feet south of the intersection of north Farm-to-Market Road 81 and State Highway 123 in Karnes County, Texas 78118.

TRD-201302790

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2013



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 2, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. John Jafreh; SOAH Docket No. 582-12-7936; TCEQ Docket No. 2012-0996-PST-E. The commission will consider the Administrative Law Judge's Proposal

for Decision and Order regarding the enforcement action against John Jafreh on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201302796

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2013



Texas Facilities Commission

Request for Proposals #303-5-20389

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ) - Parole Division, announces the issuance of Request for Proposals (RFP) #303-5-20389. TFC seeks a five (5) or ten (10) year, lease of approximately 8,666 square feet of office space in Conroe, Montgomery County, Texas.

The deadline for questions is July 30, 2013 and the deadline for proposals is August 7, 2013 at 3:00 p.m. The award date is September 20, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Jon Conant at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106687.

TRD-201302736

Kay Molina

General Counsel

Texas Facilities Commission

Filed: June 28, 2013



Texas Health and Human Services Commission

Medical Transportation Program - Public Forums

The Health and Human Services Commission (HHSC) Medical Transportation Program (MTP) will be hosting public forums in the following locations to hear public feedback regarding the delivery of Non-Emergency Medical Transportation services through Managed Transportation Organizations (MTOs) and on the proposed MTO regional maps.

City	Location	Date
Lubbock	HHSC Offices - Conference Rooms 201-203 6302 Iola Avenue Lubbock, Texas	Monday, July 15, 2013 10:00 a.m. - 12:00 noon
Houston	HHSC Service Center 1330 E. 40 th Street, Room 6 Houston, Texas 77022	Thursday, July 18, 2013 10:00 a.m. - 12:00 noon
Tyler	HHSC Offices 302 E. Riech Road Tyler, Texas 75703	Monday, July 22, 2013 10:00 a.m. - 12:00 noon
Dallas	Children's Medical Center 1935 Medical District Drive Moore Auditorium Dallas, Texas 75235	Tuesday, July 23, 2013 9:00 a.m. - 11:00 a.m.
El Paso	El Paso Metropolitan Planning Organization 10767 Gateway Boulevard, West, Suite 605 El Paso, Texas 79905	Wednesday, July 24, 2013 1:00 p.m. - 3:00 p.m.
San Antonio	HHSC Offices 11307 Roszell, Room 2001 San Antonio, Texas 78217	Friday, July 26, 2013 10:00 a.m. - 12:00 noon
Abilene	HHSC Offices 4601 South First, K-101-103 Abilene, Texas 79605	Monday, July 29, 2013 10:00 a.m. - 12:00 noon
Austin	Brown-Heatly 4900 N. Lamar, Room 1410 Austin, Texas 78751	Tuesday, July 30, 2013 1:00 p.m. - 3:00 p.m.
Harlingen	601 W. Sesame Drive (Rockport) Harlingen, Texas 78550	Wednesday, July 31, 2013 10:00 a.m. - 12:00 noon

Contact: LeShawn Manus, Medical Transportation Program, 1106 Clayton Lane, Austin, Texas 78723, phone (512) 706-4900, fax: (512) 706-4999, or e-mail leshawn.manus@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact LeShawn Manus at (512) 706-4900 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201302802

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 3, 2013

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Notice of Proposed Reimbursement Rates for Nursing Facilities

Proposed Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) proposes the following per diem reimbursement rates for the Nursing Facility program operated by the Department of Aging and Disability Services (DADS). The Notice of Public Hearing for these proposed rates was published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4218).

Reimbursement rates for the Nursing Facility program are proposed to be effective September 1, 2013, as follows:

Base Rates by Resource Utilization Group (RUG) Class

RUG	RUG Base Rate
RAD (Rehabilitation D)	\$186.06
RAC (Rehabilitation C)	\$164.35
RAB (Rehabilitation B)	\$154.36
RAA (Rehabilitation A)	\$135.75
SE3 (Extensive Services 3)	\$222.21
SE2 (Extensive Services 2)	\$188.68
SE1 (Extensive Services 1)	\$163.83
SSC (Special Care C)	\$160.00
SSB (Special Care B)	\$151.25
SSA (Special Care A)	\$150.92
CC2 (Clinically Complex C2)	\$130.69
CC1 (Clinically Complex C1)	\$123.80
CB2 (Clinically Complex B2)	\$119.89
CB1 (Clinically Complex B1)	\$114.47
CA2 (Clinically Complex A2)	\$108.68
CA1 (Clinically Complex A1)	\$102.16
IB2 (Impaired Cognition B2)	\$108.84
IB1 (Impaired Cognition B1)	\$101.48
IA2 (Impaired Cognition A2)	\$92.67
IA1 (Impaired Cognition A1)	\$87.88
BB2 (Behavior Problems B2)	\$106.87
BB1 (Behavior Problems B1)	\$96.72
BA2 (Behavior Problems A2)	\$90.94
BA1 (Behavior Problems A1)	\$82.28
PE2 (Reduced Physical Function E2)	\$115.10
PE1 (Reduced Physical Function E1)	\$108.80
PD2 (Reduced Physical Function D2)	\$110.33
PD1 (Reduced Physical Function D1)	\$103.83
PC2 (Reduced Physical Function C2)	\$101.07
PC1 (Reduced Physical Function C1)	\$96.92
PB2 (Reduced Physical Function B2)	\$94.36
PB1 (Reduced Physical Function B1)	\$89.79
PA2 (Reduced Physical Function A2)	\$84.20
PA1 (Reduced Physical Function A1)	\$79.45
Default when Minimum Date Set assessment data are incomplete	\$79.45
Default when a Minimum Data Set assessment is missing.	\$79.45
Supplemental Payments:	
Ventilator - Continuous	\$123.77
Ventilator - Less than Continuous	\$49.51
Pediatric Tracheostomy	\$74.26

A facility participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the

above payment rates based upon its level of enrollment in the Enhanced Direct Care Staff Rate:

Minutes Associated with Proposed Rate*	Proposed Rate Per Diem
1 LVN Minute = 2.05 Aide Minutes = 0.68 RN Minutes	\$0.39
2 LVN Minutes = 4.11 Aide Minutes = 1.37 RN Minutes	\$0.78
3 LVN Minutes = 6.16 Aide Minutes = 2.05 RN Minutes	\$1.17
4 LVN Minutes = 8.21 Aide Minutes = 2.74 RN Minutes	\$1.56
5 LVN Minutes = 10.26 Aide Minutes = 3.42 RN Minutes	\$1.95
6 LVN Minutes = 12.32 Aide Minutes = 4.11 RN Minutes	\$2.34
7 LVN Minutes = 14.37 Aide Minutes = 4.79 RN Minutes	\$2.73
8 LVN Minutes = 16.42 Aide Minutes = 5.47 RN Minutes	\$3.12
9 LVN Minutes = 18.47 Aide Minutes = 6.16 RN Minutes	\$3.51
10 LVN Minutes = 20.53 Aide Minutes = 6.84 RN Minutes	\$3.90
11 LVN Minutes = 22.58 Aide Minutes = 7.53 RN Minutes	\$4.29
12 LVN Minutes = 24.63 Aide Minutes = 8.21 RN Minutes	\$4.68
13 LVN Minutes = 26.68 Aide Minutes = 8.89 RN Minutes	\$5.07
14 LVN Minutes = 28.74 Aide Minutes = 9.58 RN Minutes	\$5.46
15 LVN Minutes = 30.79 Aide Minutes = 10.26 RN Minutes	\$5.85
16 LVN Minutes = 32.84 Aide Minutes = 10.95 RN Minutes	\$6.24
17 LVN Minutes = 34.89 Aide Minutes = 11.63 RN Minutes	\$6.63
18 LVN Minutes = 36.95 Aide Minutes = 12.32 RN Minutes	\$7.02
19 LVN Minutes = 39.00 Aide Minutes = 13.00 RN Minutes	\$7.41
20 LVN Minutes = 41.05 Aide Minutes = 13.68 RN Minutes	\$7.80
21 LVN Minutes = 43.10 Aide Minutes = 14.37 RN Minutes	\$8.19
22 LVN Minutes = 45.16 Aide Minutes = 15.05 RN Minutes	\$8.58
23 LVN Minutes = 47.21 Aide Minutes = 15.74 RN Minutes	\$8.97
24 LVN Minutes = 49.26 Aide Minutes = 16.42 RN Minutes	\$9.36
25 LVN Minutes = 51.32 Aide Minutes = 17.11 RN Minutes	\$9.75
26 LVN Minutes = 53.37 Aide Minutes = 17.79 RN Minutes	\$10.14
27 LVN Minutes = 55.42 Aide Minutes = 18.47 RN Minutes	\$10.53

* LVN = Licensed Vocational Nurse; RN = Registered Nurse

A facility that verifies liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition

to the above payment rates based upon the type of liability insurance coverage the facility maintains:

Type of Liability Insurance	Proposed Rate Per Diem
General and Professional	\$1.61
Professional Only	\$1.48
General Only	\$0.13

Methodology and Justification. The proposed Medicaid payment rates incorporate appropriations provisions from the 2014 - 2015 General Appropriations Act, Senate Bill 1, 83rd Legislature, Regular Session, 2013 (Article II, DADS, Rider 40), which appropriated funds to provide for a two percent rate increase in fiscal year 2014 for nursing facilities and hospice nursing facilities. HHSC's proposed pay-

ment rates were calculated in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter A, §355.307, Reimbursement Setting Methodology; §355.308, Direct Care Staff Rate Component; and §355.312, Reimbursement Setting Methodology--Liability Insurance Costs. These rates and minutes were subsequently adjusted in accordance with 1 TAC Chapter 355,

Subchapter A, §355.101, Introduction, and §355.109, Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs, as well as 1 TAC Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

TRD-201302717

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 27, 2013



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 13-014 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to update the optometric services section of the Basic State Plan. Services of the type an optometrist is legally authorized to perform are specifically included in the term "physicians' services" under this plan and are reimbursed whether furnished by a physician or an optometrist. The proposed amendment is effective July 1, 2013.

Upon approval of this amendment, optometrists will be eligible for the meaningful use of electronic health record (EHR) incentive payments (Medicaid EHR Incentive Program) authorized by the Health Information Technology Act as part of the 2009 American Recovery and Reinvestment Act. The incentive payments associated with this amendment are 100 percent federally funded. For federal fiscal year 2013, the estimated additional expenditure of federal funds is \$1,062,500. For federal fiscal years 2014 and 2015, the additional expenditure is estimated to be \$425,000.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 462-6282; or by e-mail at ashley.fox@hpsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201302739

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 28, 2013



Texas Department of Insurance

Company Licensing

Application to change the name of CHARTIS CASUALTY COMPANY to AIG ASSURANCE COMPANY, a fire and/or casualty company. The home office is in Harrisburg, Pennsylvania.

Application to change the name of CHARTIS PROPERTY CASUALTY COMPANY to AIG PROPERTY CASUALTY COMPANY, a fire and/or casualty company. The home office is in Harrisburg, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201302799

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: July 3, 2013



Public Notice

According to the requirements in 28 Texas Administrative Code §7.68(s), the Texas Department of Insurance is providing notice of the annual, quarterly, and supplemental filing checklists that reference the latest editions of the annual statement, quarterly statement, forms and instructions adopted by the NAIC and the Texas-specific filing forms and instructions. These checklists may be found at <http://www.tdi.texas.gov/financial/indexsmart.html>.

TRD-201302715

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: June 26, 2013



Texas Department of Licensing and Regulation

Vacancies on the Texas Tax Professional Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Texas Tax Professional Advisory Committee established by Texas Occupations Code, Chapter 1151. The purpose of the Texas Tax Professional Advisory Committee (Committee) is to recommend to the Texas Commission on Licensing and Regulation (Commission) rules and standards regarding technical issues relating to tax professionals; provide advice to the Commission regarding continuing education courses and curricula for registrants; provide advice to the Commission regarding the contents of any examination required by the Commission under this Chapter 1151; and to educate and respond to questions from the Commission and the Department regarding issues affecting tax professionals.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The advisory board consists of the following members: two members who are certified under this chapter as registered professional appraisers; two members who are certified under this chapter as registered Texas collectors or registered Texas assessors; and three members who represent the public. A person may not be a public member of the committee if the person or the person's spouse: is registered, certified, or licensed by a regulatory agency in the field of property tax appraisal, assessment, or collection; is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department; owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses; or at any time has served on an appraisal review board. A person may not be a member of the committee if: the person is an officer, employee, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection; or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection. A person may not be a member of the committee if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the

person's activities for compensation on behalf of a profession related to the operation of the Committee or the Department. Members serve terms of six years, with the terms of one or two members expiring on March 1 of each odd-numbered year. This announcement is for two members who are certified under this chapter as registered Texas collectors or registered Texas assessors.

Interested persons should submit an application on the Department website at: <https://www.license.state.tx.us/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail advisory.boards@tdlr.texas.gov.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201302745

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 1, 2013

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed for publication a notice concerning Instant Game Number 1522 "Sizzlin' Cash." The notice was published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3386) in the *In Addition* section.

Section 2.2, which appears on pages 3388 and 3389, is revised to add 2.2.L, as set forth below.

L. The "FLAME" Play Symbol will never appear as "THEIR NUMBER" Play Symbol.

No other section is affected by this revision.

TRD-201302778

◆ ◆ ◆

Instant Game Number 1529 "Houston Texans"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1529 is "HOUSTON TEXANS." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1529 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1529.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, FOOTBALL SYMBOL, GOAL SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000, \$5,000 and \$100,000.

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. 1529 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
FOOTBALL SYMBOL	DOUBLE
GOAL SYMBOL	TIMES 4
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$100,000	HUN THOU

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 \$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, \$5,000 or \$100,000.

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 (1529), 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: 1529-000001-001.

K. Pack - A Pack of "HOUSTON TEXANS" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOUSTON TEXANS" Instant Game No. 1529 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 "HOUSTON TEXANS" 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 the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "FOOTBALL" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "GOAL" Play Symbol, the player wins 4 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 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. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than five (5) times.

F. The "FOOTBALL" and "GOAL" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "FOOTBALL" and "GOAL" Play Symbols will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON TEXANS" Instant Game prize of \$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 Section 2.3.C of these Game Procedures.

B. To claim a "HOUSTON TEXANS" Instant Game prize of \$1,000, \$5,000 or \$100,000, 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 "HOUSTON TEXANS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "HOUSTON TEXANS" 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 "HOUSTON TEXANS" 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 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.

2.9 Promotional Second-Chance Drawings. Any non-winning "HOUSTON TEXANS" Instant Game scratch-off Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the

back of the Ticket for information on eligibility and entry requirements.

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 5,520,000 Tickets in the Instant Game No. 1529. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1529 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	736,000	7.50
\$10	588,800	9.38
\$20	147,200	37.50
\$50	30,498	181.00
\$100	20,240	272.73
\$1,000	276	20,000.00
\$5,000	20	276,000.00
\$100,000	10	552,000.00

*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 3.62. 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. 1529 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1529, the State Lottery Act (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-201302788

Bob Biard

General Counsel

Texas Lottery Commission

Filed: July 3, 2013



Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

American Airlines (TLLRWDCC #1-0040-00)

4100 North Mingo Road

Tulsa, OK 74116

The application is being placed on the Compact Commission web site, www.tllrwddc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by July 31, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllr-wdcc.org.

TRD-201302771

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: July 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Constellation Nuclear Energy Group (TLLRWDC #1-0041-00)

1650 Calvert Cliffs Parkway

Lusby, MD 20657

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by July 31, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllr-wdcc.org.

TRD-201302772

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: July 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Philotechnics, Ltd. (TLLRWDC #1-0042-00)

201 Renovare Blvd.

Oak Ridge, TN 37830

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by July 31, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllr-wdcc.org.

TRD-201302773

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: July 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

PPL Susquehanna, LLC (TLLRWDC #1-0043-00)

769 Salem Boulevard

Berwick, PA 18603

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by July 31, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllr-wdcc.org.

TRD-201302774

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: July 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Tennessee Valley Authority (TLLRWDC #1-0044-00)

1101 Market Street

Chattanooga, TN 37402

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by July 31, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission
Attention: Leigh Ing, Executive Director
333 Guadalupe St., #3-240
Austin, TX 78701

Comments may also be submitted via email to: administration@tllr-wdcc.org.

TRD-201302775

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: July 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Xcel Energy-Monticello (TLLRWDC #1-0045-00)

2807 West County Road 75

Monticello, MN 55362

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by July 31, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission
Attention: Leigh Ing, Executive Director
333 Guadalupe St., #3-240
Austin, TX 78701

Comments may also be submitted via email to: administration@tllr-wdcc.org.

TRD-201302776

Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: July 2, 2013



North Central Texas Council of Governments

Request for Qualifications for the Regional Jobs Opportunity Pilot Program

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is undertaking the formation, implementation, and evaluation of a proposed jobs program oversight model, designated the Regional Jobs Opportunity Pilot Program (RJOPP). The objective of this 4-year program is to provide disadvantaged populations the skills

needed to perform various public works construction jobs through classroom instruction and construction field experience and to provide Minority, Women and Small Business Enterprise (M/W/SBE) contractor training and mentoring to enhance their ability to effectively compete for public works construction jobs.

NCTCOG is seeking a Program Director and Community Liaison to perform managerial and administrative activities for the program's two phases. Phase 1 (Outreach to Disadvantaged Communities and Minority Contractors) and Phase 2 (Small Construction Field Experience) activities include, but are not limited to: coordination with the Texas Department of Transportation and other local, state and federal partners; outreach to disadvantaged communities and M/W/SBE contractors; development and implementation of program tools to monitor and evaluate performance; project oversight and reporting.

Due Date

Interested individuals and/or firms should submit a Statement of Qualifications and Interest no later than 5:00 p.m., on Friday, August 9, 2013, to Christopher Anderson, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Qualifications (RFQ) will be available at www.nctcog.org/rfp by the close of business on Friday, July 12, 2013.

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 RFQ. 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-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-201302795

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: July 3, 2013



Public Utility Commission of Texas

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 28, 2013, for an amendment to certificated service area for a service area exception within Carson County, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Carson County. Docket Number 41626.

The Application: Sharyland Utilities, L.P. (Sharyland) filed an application for a service area boundary exception to allow Sharyland to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 19, 2013, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41626.

TRD-201302786

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2013



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 21, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of NTS Communications, Inc. and NTS Telephone Company, LLC for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41619.

The Application: Both NTS Communications, Inc. and NTS Telephone Company, LLC are competitive local exchange carriers that provide facilities-based telecommunications services in the state of Texas and have been designated as an eligible telecommunications provider (ETP) and as an eligible telecommunications carrier (ETC) by the commission. Applicants seek a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 in order to align the rule and its filing deadlines with corresponding requirements of the Federal Communications Commission (FCC).

Pursuant to the rule, the report shall be filed by July 1, 2013, a date that coincided with the deadline for the federal filing. However, on May 16, 2013, the FCC eliminated the requirement for the filing of a five-year plan by competitive ETCs and granted a limited waiver of the requirement that ETCs submit a five-year plan in 2013, instead requiring rate-of-return ETCs to file the five-year plans with their 2014 annual reports on July 1, 2014. The NTS Companies request that they be relieved of any obligation to file a five-year plan under P.U.C. Substantive Rule §26.402 and that any applicable deadlines to file updates to existing plans be extended in a manner that is consistent with the deadlines imposed by the FCC for filing the identical information.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41619.

TRD-201302785

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2013



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 27, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of AMA TechTel Communications for a Good Cause Extension of the Filing Deadline Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41623.

The Application: AMA TechTel Communications (AMA) is a competitive provider of voice and data services that has been designed as an eligible telecommunications provider (ETP) by the commission pursuant to P.U.C. Substantive Rule §26.417 and as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418 to receive Texas High Cost Universal Service Plan support and Federal USF high cost support.

Pursuant to the rule, the report shall be filed by July 1, 2013, a date that coincided with the deadline for the federal filing. However, on May 16, 2013, the FCC eliminated the requirement for the filing of a five-year plan by competitive ETCs and granted a limited waiver of the requirement that ETCs submit a five-year plan in 2013, instead requiring rate-of-return ETCs to file the five-year plans with their 2014 annual reports on July 1, 2014. AMA requests that the commission grant for good cause an extension of the deadline for AMA to file its five-year plan. AMA also requests that it be granted this extension with no requirement to file any additional information this year.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41623.

TRD-201302787
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2013



Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 19, 2013 for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of ETEX Telephone Cooperative, Inc. to Recover Funds from the Texas Universal Service Fund Pursuant to P.U.C. Subst. R. §26.406. Docket Number 41598.

The Application: ETEX Telephone Cooperative, Inc. (ETEX) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to ETEX. The petition requests that the commission allow ETEX recovery of funds from the TUSF in the amount of \$1,792,600.55 to re-

place projected 2012 FUSF revenue reductions. ETEX is not seeking any additional rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41598.

TRD-201302780

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 2, 2013

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Texas Council on Purchasing from People with Disabilities

Request for Comment Regarding the Management Fee Rate Charged by TIBH Industries Inc.

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) will review and make a decision on the management fee rate charged by the central nonprofit agency, TIBH Industries Inc., for its services to the community rehabilitation programs and operation of the State Use Program for Fiscal Year 2014 as required by §122.019(e) of the Texas Human Resources Code. This review will be conducted at the Council's meeting on Friday, September 20, 2013. The Council's meeting will be held at the John H. Reagan Building, 105 West 15th Street, Room 120, Austin, Texas. TIBH Industries Inc. has requested that the Council set the Fiscal Year 2014 management fee rate at 6% of the sales price for products, 6% of the contract price for services and 5% of the contract price for temporary services. The Council seeks public comment on TIBH Industries Inc. management fee rate request as required by §122.030(a) - (b) of the Texas Human Resources Code and 40 TAC §189.7(b) - (d).

Comments should be submitted in writing on or before Monday, September 2, 2013, to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 111 E. 17th Street, Austin, Texas 78711 or via email to: kelvin.moore@tcppd.state.tx.us.

For all other questions or comments, contact the Texas Council on Purchasing from People with Disabilities at (512) 463-3244. In addition, hearing- and speech-impaired individuals with text telephones (TTY) may contact the Council on Purchasing from People with Disabilities at (800) 531-5441 or may use the relay option of their choice to call the Council at (512) 463-3244.

TRD-201302770

David Duncan

Deputy General Counsel, TPASS Division

Texas Council on Purchasing from People with Disabilities

Filed: July 2, 2013

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Request for Comment Regarding the Services Performed by TIBH Industries Inc.

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) intends to review the services provided by the central nonprofit agency, TIBH Industries Inc., for Fiscal Year 2013 as required by §122.019(c) of the Texas Human Resources Code.

As required by that section, the Council will review the performance of TIBH to determine whether that agency's performance complies with the Council's contractual specifications. This review will be considered at the next Council meeting on Friday, September 20, 2013. The Council's meeting will be held at the John H. Reagan Building, 105 West 15th Street, Room 120, Austin, Texas. The Council requests that interested parties submit comments regarding the services of TIBH Industries Inc. in its operation of the State Use Program under §122.019(a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Monday, September 2, 2013, to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 111 E. 17th Street, Austin, Texas 78711.

For all other questions or comments, contact the Texas Council on Purchasing from People with Disabilities at (512) 463-3244. In addition, hearing- and speech-impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (800) 531-5441.

TRD-201302769

David Duncan

Deputy General Counsel, TPASS Division

Texas Council on Purchasing from People with Disabilities

Filed: July 2, 2013

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San Saba County

Request for Comments and Proposals from Parties Interested in Providing Additional Medicaid Beds in San Saba County, Texas

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners Court of a county with no more than two (2) nursing homes to request that the Department of Aging and Disability Services (DADS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Commissioners Court of San Saba County is considering requesting that DADS contract for more Medicaid nursing facility beds in San Saba County. The Commissioners Court is soliciting comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals for DADS to contract for additional Medicaid beds in San Saba County should be presented to the Commissioners Court of San Saba County, Texas in the regular session Monday, July 29, 2013, at 9:00 a.m. in the Commissioners Courtroom, Courthouse, 500 E. Wallace, 2nd Floor, San Saba, Texas.

TRD-201302716

Byron Theodosis

County Judge

San Saba County

Filed: June 27, 2013

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The City of Bryan, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Bryan, Coulter Field. TxDOT CSJ No. 13BP-BRYAN. Scope: Prepare an Airport Business Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, management structure and options, airport rates and charges, market analysis, provide an assessment of business/economic development opportunities, as well as an updated Airport Layout Plan. The Airport Business Plan should be tailored to the individual needs of the airport.

There is no DBE goal. The TxDOT Project Manager is Matthew Felton.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Six completed copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than August 6, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local Sponsor member. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Beverly Longfellow, Grant Manager, or Matthew Felton, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201302735

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 28, 2013



Open Meetings

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

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

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

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

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

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

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

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

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

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

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)

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***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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