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# TEXAS REGISTER

*Volume 33 Number 6*

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*Cristina Garcia*

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

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

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# THE GOVERNOR

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

## Appointments

### Appointments for January 22, 2008

Designating Christopher DeCluitt as Presiding Officer of the Brazos River Authority Board of Directors for a term at the pleasure of the Governor. Mr. DeCluitt is replacing Steve Pena of Round Rock as presiding officer of the board.

Designating Nedra Foster of Silsbee as Presiding Officer of the Texas Board of Professional Land Surveying for a term at the pleasure of the Governor. Ms. Foster is replacing Douglas Turner of League City as presiding officer.

Appointed to the Texas State Council for Interstate Adult Offender Supervision for a term to expire February 1, 2011, Rissie Owens of Huntsville (replacing Jim Sallans of Austin whose term expired).

Appointed to the Texas State Council for Interstate Adult Offender Supervision for a term to expire February 1, 2013, Katherine Winckler of Kemah (Ms. Winckler is being reappointed). Ms. Winckler will replace Raymond Parra as Presiding Officer of the board.

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, Grady Barr of Abilene (replacing Donald D. Butler of Abilene whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, F. LeRoy Bell of Tuscola (replacing Fred Lee Hughes of Abilene whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, Salvatore A. Zaccagnino of Caldwell (Mr. Zaccagnino is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2008, Taylor King Ellison of Austin (replacing Randi Shade of Austin whose term expired).

Appointed to the OneStar Foundation for a term to expire March 15, 2008, W. Fred Smith of Tyler (replacing Tim Lyles of San Antonio whose term expired).

Appointed to the Interstate Compact Administrator for Adult Offender Supervision for a term to expire at the pleasure of the Governor, Stuart Jenkins of Cedar Park (replacing Kathy Winckler of Kemah).

Appointed to the Committee on Health and Long-Term Care Insurance Incentives, pursuant to SB10, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Victor Leal of Canyon.

Appointed to the Committee on Health and Long-Term Care Insurance Incentives, pursuant to SB10, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Kim Cram of San Antonio.

Appointed to the Committee on Health and Long-Term Care Insurance Incentives, pursuant to SB10, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Steve Banta of Colleyville.

Rick Perry, Governor

TRD-200800465



## Appointments

### Appointments for January 29, 2008

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2013, Charles Real of Marion (Mr. Real is being reappointed).

Appointed to the Texas Facilities Commission for a term to expire January 31, 2009, Virginia Hermosa Boissonneault of Austin (replacing Brenda Pejovich of Dallas who resigned).

Appointed to the University of Houston Board of Regents for a term to expire August 31, 2011, Carroll Ray of Houston (replacing Morgan O'Connor of Victoria whose term expired).

Appointed to the University of Houston Board of Regents for a term to expire August 31, 2013, Michele Mosbacher of Houston (replacing Raul Gonzalez of Austin whose term expired).

Appointed to the University of Houston Board of Regents for a term to expire August 31, 2013, Nelda Luce Blair of The Woodlands (replacing Michael Cemo of Houston whose term expired).

Appointed to the University of Houston Board of Regents for a term to expire August 31, 2013, Jacob Monty of Houston (replacing Leroy Hermes of Houston whose term expired).

Appointed to the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 2009, Lisa Birkman of Round Rock (replacing Sue Kennedy of Nacogdoches who no longer qualifies).

Appointed to the Communities in Schools Advisory Committee for a term to expire at the pleasure of the Governor, Catherine Estrada of Fort Worth (replacing Linda Mora of San Antonio who resigned).

Appointed to the Board of Tax Professional Examiners for a term to expire March 1, 2011, Steven Mossman of Flower Mound (replacing Deborah Hunt of Georgetown whose term expired).

Appointed to the Board of Tax Professional Examiners for a term to expire March 1, 2011, Pollard Hickman Coates of Medina (replacing Michael Amezcua of San Antonio whose term expired).

Appointed to the Board of Tax Professional Examiners for a term to expire March 1, 2013, Dorye Kristeen Roe of Bryan (Ms. Roe is being reappointed). Ms. Roe will replace Deborah Hunt of Georgetown as Presiding Officer of the board.

Appointed to the Board of Tax Professional Examiners for a term to expire March 1, 2013, James Childers of Canyon (Mr. Childers is being reappointed).

Appointed to the Jefferson and Orange County Pilots for a term to expire August 22, 2009, Russell Covington of Orange (replacing Andrew W. Dunn of Orange whose term expired).

Appointed to Humanities Texas for a term to expire December 31, 2008, Maceo Dailey of El Paso (Mr. Dailey is being reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2008, Nancy Cain Marcus of Dallas (Ms. Marcus is being reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2009, Robert Kruckemeyer of Spring (Mr. Kruckemeyer is being reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2009, Linda Valdez of Rockport (Ms. Valdez is being reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2009, Virginia Dudley of Comanche (Ms. Dudley is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Wendy Taylor of Austin (Ms. Taylor is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Peggy Hairgrove of Haskell (Ms. Hairgrove is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Cynthia Jenkins of Irving (Ms. Jenkins is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Christie Leedy of Abilene (Ms. Leedy is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Lisa Lucero of Austin (Ms. Lucero is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Becky McKinley of Amarillo (Ms. McKinley is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Carmen Pagan of McAllen (Ms. Pagan is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Carol Foxhall Peterson of Alpine (Ms. Peterson is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Tresa Rockwell of Austin (Ms. Rockwell is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Connie Weeks of Austin (Ms. Weeks is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Daisy White of Houston (Ms. White is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Lisa Perini of Buffalo Gap (replacing Keely Appleton of Arlington whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Stephanie Cavender of San Antonio (replacing Sue Chiang of Sugar Land whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2009, Sharon Smith Pittman of College Station (new position).

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2010, Albert Gamez of Floresville (replacing Marvin Quinney of Stockdale whose term expired).

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2010, Tony Wilenchik of Schertz (replacing Harold Baldwin of Schertz whose term expired).

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2010, Diana Bautista of Pleasanton (replacing Weldon Cude of Pleasanton whose term expired).

Appointed to the South Texas Regional Review Committee for a term to expire January 1, 2010, Joe Rathmell of Zapata (filling vacant position).

Appointed to the South Texas Regional Review Committee for a term to expire January 1, 2010, Romeo Salinas of Zapata (filling vacant position).

Appointed to the Panhandle Regional Review Committee for a term to expire January 1, 2010, Robert Dixon of Pampa (replacing Joe Collins of Dimmitt whose term expired).

Appointed to the Coastal Bend Regional Review Committee for a term to expire January 1, 2010, C.H. "Burt" Mills, Jr. of Rockport (replacing Glenn Guillory of Rockport whose term expired).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2010, Wayne Brascom of Horseshoe Bay (replacing R.G. Floyd of Llano whose term expired).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2010, W.C. Estes of Elgin (filling vacant position).

Appointed to the Permian Basin Regional Review Committee for a term to expire January 1, 2010, Robert Zap of Andrews (replacing John Farris of Lamesa whose term expired).

Appointed to the Permian Basin Regional Review Committee for a term to expire January 1, 2010, Tom Keyes of Seminole (replacing Gene DeFee of Lamesa whose term expired).

Appointed to the Permian Basin Regional Review Committee for a term to expire January 1, 2010, Samuel Contreras of Pecos (replacing Michael Bradford of Midland whose term expired).

Appointed to the Permian Basin Regional Review Committee for a term to expire January 1, 2010, Joseph M. Shuster of Fort Stockton (replacing Ted Westmoreland of Kermit whose term expired).

Appointed to the Brazos Valley Regional Review Committee for a term to expire January 1, 2010, Bert Miller of Navasota (replacing Charles Bowman of Hearne whose term expired).

Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, Woody Hunt of El Paso.

Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, Bernie Francis of Carrollton.

Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, Roberto Zarate of San Antonio.

Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, A.W. Riter of Tyler.



Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, Raymund Paredes of Austin.

Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, Robert Shepard of Harlingen.

Appointed to the Task Force on Higher Education Incentive Funding, pursuant to Executive Order RP-67, for a term to expire June 1, 2009, Claud Kern Wildenthal of Dallas. Mr. Wildenthal will serve as Presiding Officer of the task force.

Appointed to the East Texas Regional Review Committee for a term to expire January 1, 2010, Billy Smith of Van (replacing Ann Reeves of Pittsburg whose term expired).

Appointed to the East Texas Regional Review Committee for a term to expire January 1, 2010, Linda Ray of Elkhart (replacing Becky Dempsey of Tyler whose term expired).

Rick Perry, Governor

TRD-200800540



# 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>.)

## Request for Opinions

### RQ-0664-GA

#### Requestor:

The Honorable Geoffrey I. Barr  
Comal County Criminal District Attorney  
150 North Seguin Avenue, Suite 307  
New Braunfels, Texas 78130

Re: Authority of a county and/or a municipality to impose and enforce  
density regulations (RQ-0664-GA)

#### Briefs requested by February 22, 2008

### RQ-0665-GA

#### Requestor:

The Honorable Chris Taylor  
Tom Green County Attorney  
122 West Harris Avenue  
San Angelo, Texas 76903

Re: Whether the conduct of a constable implicates the resign-to-run  
provisions of article XVI, section 65, of the Texas Constitution (RQ-  
0665-GA)

#### Briefs requested by February 25, 2008

### RQ-0666-GA

#### Requestor:

The Honorable Laurie K. English  
112th Judicial District Attorney  
Post Office Box 1187  
Crockett County Courthouse  
Ozona, Texas 76943

Re: Meaning of the term "previously captured" for purposes of section  
42.092, Penal Code, which prohibits cruelty to non-livestock animals  
(RQ-0666-GA)

#### Briefs requested by February 26, 2008

### RQ-0667-GA

#### Requestor:

The Honorable Kim Brimer

Chair, Committee on Administration

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Extent of a worker's lien by an automotive repair shop under section  
70.001, Property Code (RQ-0667-GA)

#### Briefs requested by February 25, 2008

### RQ-0668-GA

#### Requestor:

Mr. James A. Cox, Jr., Chair  
Texas Lottery Commission  
Post Office Box 16630  
Austin, Texas 78761-6630

Re: Constitutionality of section 467.025(a)(5), Government Code, and  
its applicability to members of the Lottery Commission (Request No.  
0668-GA)

#### Briefs requested by February 29, 2008

*For further information, please access the Web site at  
[www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200800511

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: January 29, 2008



Opinions

### Opinion No. GA-0599

Mr. Steve Pena, Presiding Officer

Brazos River Authority

Post Office Box 7555

Waco, Texas 76714-7555

Re: Whether the Brazos River Authority may discount and freeze cur-  
rent lease rates for lessees over 65 years of age (RQ-0611-GA)

**S U M M A R Y**

We find no statutory provision in either the Brazos River Authority's enabling legislation or applicable general laws that specifically prohibits a discounted lease rate and freeze for certain lessees.

As to article III, section 52(a) of the Texas Constitution, it does not preclude offering discounted lease rates and rate freezes to certain lessees if the lease terms do not constitute the gratuitous application of public funds for a private purpose and if the governing body reasonably determines, in the first instance, that: (1) the lease terms have as their predominant purpose the accomplishment of a public, rather than a private, purpose of the BRA; (2) the BRA retains sufficient control to ensure accomplishment of the public purpose and to protect the public's investment; and (3) the public receives a return benefit.

**Opinion No. GA-0600**

The Honorable William J. Stroman, Jr.

Sterling County Attorney

P.O. Box 88

Sterling City, Texas 76951

Re: Whether a county commissioners court is prohibited from executing a tax abatement agreement with a wind turbine company for its fixtures and improvements to be located on a commissioner's real property; whether a commissioner who will receive royalties from a wind turbine company must abstain from voting on a tax abatement agreement with the company (RQ-0612-GA)

**S U M M A R Y**

A county may enter into a tax abatement agreement with the owner of taxable real property located in a reinvestment zone, and with the owner of a leasehold interest in or improvements on tax-exempt property located in a reinvestment zone. Assuming that the "fixtures and improvements" owned by a wind turbine company constitute "improvements on tax-exempt real property that is located in a reinvestment zone" under section 312.402 of the Tax Code, the mere fact that a member of a commissioners court owns the real property on which the fixtures and improvements will be located does not prohibit fixtures and improvements from being the subject of a tax abatement agreement.

A member of a commissioners court generally must abstain from a vote on a matter if it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property distinguishable from its effect on the public. Whether a vote on a particular tax abatement agreement will have such a special economic effect is generally a question of fact that cannot be resolved in an attorney general opinion.

*For further information, please access the Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200800531

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: January 30, 2008



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request 542 (AOR-542)

The Texas Ethics Commission has been asked to consider whether, in light of Chapter 302, Government Code, a general-purpose political committee may ask a candidate for the Texas House of Representatives questions concerning candidates for speaker of the Texas House of Representatives and whether the committee may make its decision to support or not support a speaker candidate based on those responses.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200800526  
Natalia Luna Ashley  
General Counsel  
Texas Ethics Commission  
Filed: January 30, 2008



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 55. CHILD SUPPORT ENFORCEMENT

##### SUBCHAPTER P. REVIEW AND ADJUSTMENT OF A SUPPORT ORDER

###### 1 TAC §55.851

The Office of the Attorney General, Child Support Division proposes new Subchapter P, §55.851, concerning the review and adjustment of a child support order for persons receiving Title IV-D services. The proposed new section will describe the procedures of the Title IV-D agency for review and adjustment of a child support order in compliance with federal and state law.

Alicia Key, IV-D Director, Child Support Division, has determined that for the first five years the new section as proposed is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or implementing the sections.

Ms. Key has also determined that for each year of the first five years the section is in effect, the public benefit as a result of the new section will be compliance with state and federal requirements. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the new section.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed new section §55.851, is authorized by Texas Family Code §231.002, which authorizes the Office of the Attorney General to adopt rules for the provision of child support services.

The new section is proposed under Texas Family Code Chapter 156, Modification.

*§55.851. Review and Adjustment of a Child Support Order.*

(a) For persons receiving Title IV-D services, the Title IV-D agency will review the support order for modification every three years:

(1) for a TANF case;

(2) at the request of either parent for a post-assistance or Medical Assistance-Only case; or

(3) at the request of either parent for a case in which the parent has applied for Title IV-D services.

(b) After such review and if appropriate, the Title IV-D agency will adjust the support order in accordance with Texas Family Code, §156.401.

(c) The Title IV-D agency may review and adjust the support order sooner than three years, if there has been a material change in circumstances of the child or persons affected by the support order as allowed by Texas Family Code, §156.401.

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 January 28, 2008.

TRD-200800448

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: March 9, 2008

For further information, please call: (512) 463-2096



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 85. VEHICLE STORAGE FACILITIES

**16 TAC §§85.1, 85.10, 85.20, 85.200 - 85.208, 85.400, 85.450 - 85.453, 85.650, 85.700 - 85.725, 85.800, 85.900, 85.1000 - 85.1003**

The Texas Department of Licensing and Regulation ("Department") proposes new 16 Texas Administrative Code Chapter 85, §§85.1, 85.10, 85.20, 85.200 - 85.208, 85.400, 85.450 - 85.453, 85.650, 85.700 - 85.725, 85.800, 85.900, and 85.1000 - 85.1003, regarding the licensing and regulation of vehicle storage facilities and vehicle storage facility employees. These rules are necessary to implement House Bill 2094, 80th Legislature, Regular Session, 2007.

New §85.1 provides statutory authority for rule adoption.

New §85.10 defines terms used in the statute and the rules, including "abandoned nuisance vehicle," "act," "affidavit of right of

possession and control," "commission," "day," "department," "executive director," "fence," "immediate family," "impoundment," "license holder or "licensee," "main," "person," "principal," "registered owner," "vehicle," "vehicle owner," "vehicle storage facility," and "vehicle transfer."

New §85.20 establishes exemptions to the rules.

New §85.200 provides that a vehicle storage license is required.

New §85.201 establishes the licensing and application requirements for vehicle storage facilities.

New §85.202 establishes criteria for the review of vehicle storage facility license applications.

New §85.203 establishes the annual renewal requirements for vehicle storage facility licenses.

New §85.204 establishes the application requirements for a vehicle storage facility employee license.

New §85.205 establishes the annual renewal requirements for a vehicle storage facility employee license.

New §85.206 provides notice to applicants of proposed denial of applications with an opportunity to cure.

New §85.207 provides additional method of notice to licensees using the last designated e-mail address.

New §85.208 provides that a license is valid for one year.

New §85.400 establishes the insurance requirements for obtaining and renewing a vehicle storage facility license.

New §85.450 establishes the general requirement of a department initiated inspection of a vehicle storage facility.

New §85.451 provides for bi-annual inspections of a vehicle storage facility during normal business hours.

New §85.452 establishes the criteria for a risk-based inspection of a vehicle storage facility.

New §85.453 provides the procedures for corrective actions following a department initiated inspection of a vehicle storage facility.

New §85.650 provides for a Towing and Storage Advisory Board. This section list criteria of board membership, terms of office, meetings times, and board responsibilities.

New §85.700 places the burden of proving exemption from the rules on the licensee.

New §85.701 prohibits licensees from engaging in false, misleading, or deceptive advertising.

New §85.702 requires licensees to notify the department of changes in name, address, facility capacity, or the drug testing policy.

New §85.703 describes the procedures that a vehicle storage facility must initially follow to send notice to vehicle owners and lien holders.

New §85.704 describes the procedures that a vehicle storage facility must follow to provide a second notice for unclaimed vehicles before the vehicles may be disposed.

New §85.705 requires a vehicle storage facility to notify local law enforcement of every nonconsent-towed vehicle from private property stored at the facility.

New §85.706 lists the documents and information that a vehicle storage facility must retain, including the retention period.

New §85.707 requires a vehicle storage facility to give the vehicle owner the department's website and e-mail address, mailing address, and telephone number, for purposes of directing complaints.

New §85.708 describes the rights of the vehicle owner to have access to stored vehicles.

New §85.709 prohibits un-permitted tow trucks from entering the grounds of a vehicle storage facility.

New §85.710 lists the types of documents required for release of a vehicle to the vehicle owner or representative.

New §85.711 lists the types of payment a vehicle storage facility must accept for release of a stored vehicle.

New §85.712 requires payment by lienholder and insurance company for release of vehicles regardless of when the charges accrued.

New §85.713 requires a vehicle storage facility to release a vehicle to the owner or representative regardless of whether law enforcement has paid charges resulting from a law enforcement hold, unless the charges result from a delinquent administrative penalty assessed against the vehicle owner.

New §85.714 requires a vehicle storage facility to provide to a vehicle owner or representative, on request, its liability insurance company contact information including the policy number.

New §84.715 establishes a requirement that a vehicle storage facility maintain a publicly listed telephone number and notify the department of any change to that number.

New §85.716 requires a vehicle storage facility to inspect a non-consent towed vehicle, and, if necessary, correct erroneous information on the tow ticket.

New §85.717 describes the conditions under which a vehicle storage facility may remove parts from, dismantle, or demolish a stored vehicle.

New §85.718 prohibits the personal or business use of a stored vehicle by a vehicle storage facility without written owner consent.

New §85.719 requires reasonable efforts by a vehicle storage facility for the safe storage of vehicles and describes the circumstances under which impoundment fees may be charged.

New §85.720 prohibits a vehicle storage facility from repairing or altering a stored vehicle without written consent.

New §85.721 establishes procedures for transferring a stored vehicle from one vehicle storage facility to another vehicle storage facility.

New §85.722 prohibits a vehicle storage facility from charging fees except for those fees specifically authorized for owner notification, charged for daily storage, collected on behalf of government or law enforcement, and environmental hazard fees.

New §85.723 identifies statutory authority for the disposal of certain vehicles and requires the keeping of records after disposal.

New §85.724 describes the procedures for the public sale of abandoned nuisance vehicles.

New §85.725 provides a model drug testing policy for employees of a vehicle storage facility.

New §85.800 establishes the fees for initial applications, renewal applications, inspection fees, and late renewals.

New §85.900 provides for the imposition of administrative penalties and/or sanctions against a person that violates the statute or rules.

New §85.1000 establishes fencing and security requirements for a vehicle storage facility.

New §85.1001 provides that a vehicle storage facility must have an all-weather surface.

New §85.1002 provides vehicle storage facility minimum lighting requirements.

New §85.1003 provides for the location and content of signage at a vehicle storage facility.

William H. Kuntz, Jr., Executive Director of the Department, has determined that for each year of the first five-year period the new rules are in effect, there will be costs to the Department to enforce and administer these rules. The expected cost is approximately \$1,000,000 per year. Fees, which are included in the rules, have been set to generate revenues sufficient to cover these costs. There is no anticipated fiscal implication for units of local government.

Mr. Kuntz has determined that for each year of the first five-year period the new rules are in effect, the public will benefit from clarity in what is required by law of a vehicle storage facility. The rules also provide consumer protection for individuals whose vehicles are the subject of a nonconsent tow. The public will also benefit from the enhanced integrity of vehicle storage facilities and their employees.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, there will be economic costs imposed on persons and businesses that are required to obtain permits and licenses under these new rules. These costs may include initial permit and licensing fees, annual renewal fees, insurance premiums, expenses for maintaining records and conducting employee drug testing.

Mr. Kuntz has also determined that, for each year of the first five-year period the proposed new rules are in effect, costs related to licensing fees, insurance, and drug testing may represent an adverse economic effect on small businesses that operate vehicle storage facilities. However, the licensing fees, insurance, and drug testing costs are imposed by statute; therefore, no regulatory alternative is available. Accordingly, no regulatory flexibility analysis is necessary.

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

The new rules are proposed under Texas Occupations Code, Chapter 2303, which directs the Department's governing body, the Texas Commission of Licensing and Regulation ("Commission"), to adopt rules to establish the requirements for a person to be licensed to operate a vehicle storage facility, and to ensure that the facility maintains adequate standards for the care of stored vehicles; and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2303. No other statutes, articles, or codes are affected by the proposed new rules.

§85.1. Authority.

These rules are adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2303.

§85.10. Definitions.

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

(1) Abandoned nuisance vehicle--A motor vehicle that is at least 10 years old and is of a condition only to be demolished, wrecked, or dismantled.

(2) Act--The Vehicle Storage Facility Act, Texas Occupations Code, Chapter 2303.

(3) Affidavit of Right of Possession or Control--A form prescribed by the department and provided by the licensee for use by an immediate family member certifying right of possession to a vehicle stored at a vehicle storage facility.

(4) Commission--The Texas Commission of Licensing and Regulation.

(5) Day--Twenty-four continuous hours.

(6) Department--The Texas Department of Licensing and Regulation.

(7) Executive director--The executive director of the department.

(8) Fence--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.

(9) Immediate family--A vehicle owner's parents, spouse, children, brothers, and sisters.

(10) Impoundment--The following actions when performed on a stored vehicle:

(A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; and

(D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.

(11) License holder or Licensee--The person to which the department issued a license.

(12) Main entrance--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.

(13) Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(14) Primary lien holder--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.

(15) Principal--An individual who:

(A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) an ownership interest in a business that is equivalent to a fair market value of more than \$25,000;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;

(D) holds a position as a member of the board of directors or other governing body of a business; or

(E) holds a position as an elected officer of a business.

(16) Proof of loss claim form--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.

(17) Registered owner--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.

(18) Vehicle--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.

(19) Vehicle owner--A person:

(A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;

(B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;

(C) who holds a vehicle through a valid lease agreement;

(D) who is an unrecorded lienholder with a right to possession; or

(E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.

(20) Vehicle storage facility (VSF)--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.

(21) Vehicle transfer--Any movement of a vehicle out of a VSF, prior to its release as prescribed in these rules.

§85.20. Exemptions.

(a) These rules do not apply to a vehicle parked or stored at a VSF with the consent of the vehicle's owner.

(b) These rules do not apply to VSFs operated by persons licensed under Texas Occupations Code, Chapter 2301.

§85.200. License Required--Vehicle Storage Facility.

A person may not operate a VSF unless the person holds a VSF license issued by the department.

§85.201. License Requirements--Vehicle Storage Facility License.

To be eligible for a VSF license, an applicant must:

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

(2) pay the fee required under §85.800;

(3) provide proof of insurance required under §85.400;

(4) successfully pass a criminal background check;

(5) provide the name, and address of each partner if the applicant is a partnership;

(6) provide the name, and address of each corporate officer, including the president, secretary, and treasurer, if the applicant is a corporation;

(7) provide the name, and address of each owner of the VSF and the percentage of ownership interest each holds in the facility;

(8) provide the name, and address of the operator or manager of the VSF if it is not operated or managed by one of the owners;

(9) provide the facility's physical address, mailing address, and telephone number;

(10) state the VSF's storage capacity;

(11) state the height of any fence enclosing the VSF and the date it was installed;

(12) include a statement indicating whether the facility has an all weather surface, signs posted in the proper locations, and lighting, as required by these rules; and

(13) adopt the model drug testing policy provided in these rules or file an alternate drug testing policy for approval under these rules.

§85.202. License Approval--Vehicle Storage Facility.

The department may deny a VSF license application if the applicant:

(1) knowingly supplied false or incomplete information on the application;

(2) in the three years preceding the date of application, the applicant, a partner, principal, or officer of the applicant, or the general manager of the applicant, was convicted of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; or

(3) the VSF for which the license is sought does not meet the standards for storage facilities established by these rules.

§85.203. License Requirements--Vehicle Storage Facility License Renewal.

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

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

(2) pay the applicable fee required under §85.800; and

(3) successfully pass a criminal background check.

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



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

§85.204. License Requirements--Vehicle Storage Facility Employee License.

(a) To be eligible for a VSF employee license, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §85.800; and
- (3) successfully pass a criminal background check.

(b) A person may not work at a VSF unless the individual holds a license issued under these rules. A VSF may not employ a person unless the person holds a license issued by the department.

(c) For purposes of these rules, persons operating or managing a VSF as sole proprietor or an incorporated partnership are employees of the VSF and required to obtain a VSF employee license.

§85.205. License Requirements--Vehicle Storage Facility Employee License Renewal.

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

- (1) submit a completed application on a department-approved form;
- (2) pay the applicable fee required under §85.800; and
- (3) successfully pass a criminal background check.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any the duties of a VSF employee that requires a license under these rules.

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

§85.206. License--Notice of Proposed Denial; Opportunity to Comply.

(a) If the department recommends denial of an application for a license under these rules, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with these rules not later than the 14th day after the date the applicant receives the notice, the department may approve the application.

§85.207. Department Notifications to Licensee.

Unless otherwise provided for by statute or these rules, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee.

§85.208. Licenses--License Terms.

A license issued by the department is valid only for the person who applied for the license; applies only to the single VSF or person named on the license; and is valid for 12 months from the date of issuance.

§85.400. Insurance Requirements.

(a) An applicant or VSF licensee is responsible for ensuring the electronic submission of a certificate of insurance when applying for an initial license, submitting a license renewal, changing a business name or affiliation, and upon request of the department.

(b) The certificate of insurance must be obtained from and submitted by an insurance company licensed to do business in Texas pursuant to the Texas Insurance Code.

(c) The facility name and address shown on the proof of insurance form must be the same as the name and address on the license. The VSF licensee is responsible for ensuring that the insurance information on file with the department reflects the correct name and address of the insured facility.

(d) The VSF licensee must obtain insurance for the insured facility that meets the following requirements:

(1) Insurance coverage shall be in an amount of not less than:

(A) \$9,000 per claim if the VSF has space to store not more than 50 motor vehicles;

(B) \$18,000 per claim if the facility has space to store 51 to 99 motor vehicles; and

(C) \$25,000 per claim if the facility has space to store 100 or more motor vehicles.

(2) The VSF licensee's insurance policy must be kept in full force and effect so long as the facility is operating.

(3) The certificate of insurance must contain a provision obligating the insurer to give the department thirty-day notice before the effective date of a policy cancellation date. Notice must be in a form acceptable to the department.

(e) The department may revoke a VSF license if the insurance has been canceled and a replacement policy has not been filed prior to the cancellation date.

§85.450. Inspections--General.

(a) All VSFs shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to VSF owners and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the VSF. The department may conduct inspections under the Act and these rules with or without advance notice.

(c) The department inspector will contact the VSF owner, manager, or representative upon arrival at the VSF, and before proceeding with the inspection.

(d) The VSF owner, manager, or representative shall cooperate with the inspector in the performance of the inspection.

§85.451. Periodic Inspections.

(a) Each VSF shall be inspected at least once every two years.

(b) The VSF owner, manager, or representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.

(c) On completion of the inspection, the VSF shall be advised in writing of the inspection results.

(d) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations, in accordance with §85.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(e) Based on the results of the periodic inspection, a VSF may be moved to a risk-based schedule of inspections. The department will notify the owner of the VSF, in writing, if the facility becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

§85.452. Risk-based Inspections.

(a) Risk-based inspections are those required in addition to periodic inspections required under §85.451 for VSFs determined by the department to be a greater risk to the public.

(b) To determine which licensee will be subject to risk-based inspections, the department has established criteria and frequencies for inspections.

(c) The owner of the VSF shall pay the fee required under §85.800 for each risk-based inspection.

(d) VSFs subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Figure: 16 TAC §85.452(d)

(e) At the time of inspection of a VSF, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by these rules.

(f) Upon completion of the inspection, the owner of the VSF shall be advised in writing of the results.

(g) The inspection report will identify violations that must be corrected by the VSF. The report will also indicate the corrective actions required to address the violations, in accordance with §85.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(h) VSFs on a risk-based inspection schedule that have no significant violations in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the VSF, in writing, if there is a change in the VSF's risk-based schedule or if the VSF is returned to a periodic inspection schedule.

§85.453. Corrective Actions Following Inspection.

(a) When corrective actions to achieve compliance are required:

(1) the department shall provide the VSF a list of required corrective actions;

(2) within 10 days after receiving the list of required corrective actions, the VSF shall complete all corrective actions and provide written verification of the corrective actions to the department; and

(3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with §85.900.

§85.650. Towing and Storage Advisory Board.

(a) The advisory board consists of the eight members appointed by the chairman of the commission with the approval of the commission. The eight members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one owner of a vehicle storage facility located in a county with a population of less than one-million;

(4) one owner of a vehicle storage facility located in a county with a population of one-million or more;

(5) one law enforcement officer from a county with a population of less than one-million;

(6) one law enforcement officer from a county with a population of one-million or more;

(7) one parking facility owner; and

(8) one representative of property and casualty insurers who write automobile insurance in this state.

(b) The advisory board shall include representation for each classification of towing.

(c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The chairman of the commission appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of these rules, including examination content, licensing standards, and continuing education requirements.

§85.700. Responsibilities of the Licensee--Proof of Exempt Status.

Vehicle storage facilities shall be responsible for providing proof regarding whether or not a vehicle was stored with the vehicle owner's consent.

§85.701. Responsibilities of Licensee--Advertising.

A licensee may not engage in false, misleading, or deceptive advertising.

§85.702. Responsibilities of Licensee--Changes to VSF Operator and VSF Employee License.

(a) A licensed VSF operator shall notify the department of changes to any of following information:

(1) change in the business name no later than the effective date of the change;

(2) change of mailing or physical address no later than the effective date of the change;

(3) change in the facility's storage capacity no later than the effective date of the change; or

(4) change in the company's drug testing policy.

(b) VSF employees licensed under these rules must submit a change of mailing address to the department within thirty days of the change.

§85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.

(a) Applicability. If a vehicle is removed by the vehicle owner within 24 hours after the VSF receives the vehicle, notification as described in subsections (b) - (i) does not apply.

(b) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified, electronic certified, or registered mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles not registered in Texas. After accepting for storage a vehicle not registered in Texas, the VSF shall notify the vehicle's current registered owner and all recorded lien holders within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle.

(c) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered.

(d) Notice under this section must:

(1) be correctly addressed;

(2) carry sufficient postage; and

(3) be sent by certified mail, return receipt requested, or electronic certified mail.

(e) Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark and to be timely filed if:

(1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b), or

(2) the notice was published as provided for by subsection (f).

(f) Notice by publication. Notice to the registered owner and the primary lienholder of a vehicle towed to a VSF may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle is registered in another state;

(2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;

(3) the identity of the registered owner cannot be determined;

(4) the registration does not contain an address for the registered owner; or

(5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(g) Notice by publication is not required if each notice sent in accordance with §85.703 is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(h) Only one notice is required to be published for an abandoned nuisance vehicle.

(i) Form of notifications. All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested.

(1) All mailed notifications shall state:

(A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";

(C) the first date for which a storage fee is assessed;

(D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;

(E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";

(G) a notice of the towed vehicle owner's right under Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

(H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.

(2) All published notifications shall state:

(A) the full name, street address, telephone number, and VSF license number of the VSF;

(B) a description of the vehicle; and

(C) the total amount of charges assessed against the vehicle.

(3) Notices published in a newspaper may contain information for more than one towed vehicle.

§85.704. Responsibilities of Licensee--Second Notice; Consent to Sale.

(a) If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683, Transportation Code, before the 41st day after the date notice is mailed or published under §85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.

(b) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under §85.703, the operator of the VSF shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

(c) Notice under this section must include:

(1) the information listed in §85.703(i);

(2) a statement of the right of the facility to dispose of the vehicle under §85.704; and

(3) a statement that the failure of the owner or lienholder to claim the vehicle before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(d) Notwithstanding subsection (b), if publication is required for notice under this section, the notice must include:

(1) the information listed in §85.703(i)(2); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:

(A) a waiver of all right, title, and interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

§85.705. Responsibilities of Licensee--Report to Law Enforcement.

(a) Nonconsent towed vehicle towed from private property. A VSF accepting a nonconsent towed vehicle towed from private property must report that tow to the local law enforcement agency for the area from which the vehicle was towed.

(b) The report to law enforcement must be made within two hours of receiving the vehicle. It must include:

(1) the vehicle's license plate number and issuing state;

(2) vehicle identification number; and

(3) location from which the vehicle was towed.

(c) VSF records shall indicate specifically to whom the report required by subsection (b) was reported and in what manner, as well as the time and date of the report, or the unique control or tracking number assigned to the report by local law enforcement documenting the report.

§85.706. Responsibilities of Licensee--Documentation and Records.

(a) Retention of written documentation. Vehicle storage facility licensees must maintain the original written documentation regarding their operations for a period of two years from the date of the release or disposal of the vehicle. Written documentation shall be in the form of:

(1) motor vehicle registration checks;

(2) notification letters;

(3) certified return receipts;

(4) tow tickets (if applicable);

(5) bills for service;

(6) auction receipts;

(7) inventory (if applicable);

(8) certificates of authority to demolish; and

(9) any authorized document used to release a vehicle, including but not limited to a title, affidavit of right of possession and control, or court order.

(b) Minimum information. Each licensee shall keep written records on each vehicle kept or stored at the VSF. These records shall contain:

(1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;

(2) the date, time and location from which the vehicle was towed, and name of person who authorized the tow;

(3) the name of the tow truck driver, driver TDLR license number, the name of the company that towed the vehicle, and the license plate numbers of plates issued to the tow truck under Transportation Code, §502.180, and §504.508;

(4) the date the vehicle was released, the name of the individual to whom the vehicle was released, and the type of identification (Texas drivers license or other state or federally issued photo identification) and identification number provided by the individual to whom the vehicle was released;

(5) the date of any vehicle transfer, and the address of the location to which the vehicle was transferred along with the name of the towing company and tow truck driver, with TDLR license number, who made the transfer;

(6) a copy of any certificate of title issued after the vehicle came into the possession of the VSF, any certificate of authority to demolish, any police auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the VSF or if the vehicle has been disposed of or demolished; and

(7) all amounts received at the time the vehicle was released, including the specific nature of each charge.

(c) Nonconsent tow tickets. The VSF shall ensure that nonconsent tow tickets (if applicable) contain the registered name of the towing company and the certificate of registration number on file with the department.

(d) Availability of documentation. All required documentation shall be made available by the licensee, the licensee's agent, or the licensee's employee for inspection and copying upon request by department personnel, or a law enforcement officer, during the same hours the VSF must ensure that vehicles are available for release to the vehicle owner.

(e) Care and custody of records. Required records shall be kept under the care and custody of the licensee for at least two years from the date the vehicle was released or disposed of.

§85.707. Responsibilities of Licensee--Notice of Complaint Procedure.

(a) Each VSF shall notify the vehicle owner of the department's website and email address, mailing address, and telephone number, for purposes of directing complaints regarding the vehicle storage to the department.

(b) The licensee may use a legible sticker or rubber stamp to convey the required information required by subsection (a). The notice shall be included on:

(1) a sign prominently displayed to the public at the place of payment, with letters at least one inch in height, and a contrasting background; and

(2) the front page of any bill for service.

§85.708. Responsibilities of Licensee--Rights of Owner or Authorized Representative.

(a) A VSF must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.

(b) When a person demonstrates ownership or right to possession of a motor vehicle stored at a VSF, the person or his/her authorized representative shall:

(1) be entitled to inspect a copy of the tow ticket for the motor vehicle and shall not be required to pay any fees or charges before doing so (reasonable opportunity to view the tow ticket displayed behind a glass enclosure satisfies this requirement);

(2) be given access to, and be allowed to remove, any personal belongings in the vehicle, unless otherwise indicated by a law enforcement officer (the VSF must require a receipt from the person to whom the personal belongings are released for any such property removed from the stored vehicle by the vehicle owner or authorized representative);

(3) have access, during normal business hours, to the vehicle for the purposes of insurance and/or repair estimates; and

(4) have access to the current nonconsent towing fees schedule on file with the department, as prescribed in these rules (relating to Required Posting at Vehicle Storage Facility), for the specific name of the company that towed the vehicle to the VSF.

(c) When right of possession is demonstrated by submission of a proof of loss claim form from an insurance company, subsection (b)(2) does not apply.

§85.709. Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited.

No VSF shall allow any tow truck that is not permitted under Texas Occupations Code, Chapter 2308, to enter onto the grounds of the facility.

§85.710. Responsibilities of Licensee--Release of Vehicles.

Release of vehicles. The licensee shall comply with the following requirements when releasing vehicles.

(1) The licensee shall comply with all provisions of Texas Occupations Code, Chapter 2308, Subchapter J, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:

(A) the justice court that has jurisdiction in the precinct in which the VSF is located; and

(B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.

(2) The licensee shall provide the owner or the owner's representative with a tow ticket.

(3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §85.1003, upon payment of all fees due, presentation of valid identification

(Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) a notarized power-of-attorney;

(B) a court order;

(C) a certificate of title;

(D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(E) executed proof of loss claim form from an insurance company to show a right to possession;

(F) name and address information corresponding to that contained in the files of the Texas Department of Transportation's Vehicle Titles and Registration Division; or

(G) a department approved Affidavit of Right of Possession and Control, which is to be furnished by the VSF upon request (an Affidavit of Right of Possession and Control is not to be used as a repossession instrument).

(4) A VSF may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

(5) A VSF must accept evidence of financial responsibility (insurance card), as required by §601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(6) Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(A) pay the charges associated with delivery or storage of the vehicle; and

(B) present valid photo identification issued by this state, another state, or a federal agency.

(7) If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.

(8) If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

§85.711. Responsibilities of Licensee--Forms of Payment for Release of Vehicle.

In addition to other forms of payment accepted by the VSF, including a governmental VSF, a VSF must accept credit cards, debit cards or electronic checks.

§85.712. Responsibilities of Licensee--Release of Vehicles; Payment by Lienholder or Insurance Company.

(a) A lienholder who repossesses a vehicle delivered to a VSF is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.

(b) An insurance company that pays a claim of total loss on a vehicle in a VSF is liable to the operator of the facility for any money

owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company paid the claim.

§85.713. Responsibilities of Licensee--Release of Vehicles From Law Enforcement Hold.

(a) The licensee may not refuse to release the vehicle to the vehicle's owner or insurance company due to nonpayment by the law enforcement agency that directed the towing and storage of the vehicle for evidentiary or examination purposes.

(b) Pursuant to 37 Texas Administrative Code §4.16, relating to commercial vehicle rules and enforcement procedures, a commercial motor vehicle stored at the direction of the Texas Department of Public Safety shall not be released until the amount of delinquent administrative penalty assessed against the vehicle owner has been paid.

§85.714. Responsibilities of Licensee--Provide Insurance Information to Vehicle Owner.

Upon request by the vehicle owner or the vehicle owner's authorized representative, the licensee shall provide the name, address, and telephone number of the insurance company that is providing required liability insurance coverage to the facility, in addition to the facility's insurance policy or certificate number for purposes of filing a claim for loss or damage of property. The insurance information shall be the same as that on file with the department.

§85.715. Responsibilities of Licensee--Publicly Listed Telephone Number.

All VSFs shall have a publicly listed telephone where the VSF can be contacted. If the telephone number is changed from the number in the most recent VSF application, the VSF shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

§85.716. Responsibilities of Licensee--Inspection of Stored Vehicles.

When the VSF accepts a vehicle towed without the vehicle owner's consent, the VSF shall inspect the vehicle and note as an addition on the tow ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the tow ticket. If the license plate number or vehicle identification number on the tow ticket is incorrect, the VSF shall note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

§85.717. Responsibilities of Licensee--Removal of Parts; Dismantling or Demolishing Stored Vehicles.

Except as provided for by these rules, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed VSF. Vehicles may be dismantled or demolished only if the VSF has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

§85.718. Responsibilities of Licensee--Use of Stored Vehicles Prohibited.

No stored vehicle may be used for personal or business use without the written consent of the vehicle's owner.

§85.719. Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees.

(a) Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking

doors, rolling up windows, and closing doors, hatchbacks, sunroofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in these rules.

(b) Impoundment of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the impoundment of the stored vehicle.

(c) Impoundment Fees. A VSF operator is entitled to charge a fee for impoundment if, in addition to the requirements set out in subsection (b), the VSF operator, at a minimum:

(1) conducts a written inventory of any unsecured personal property contained in the vehicle;

(2) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(3) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation or analogous state agency.

§85.720. Responsibilities of Licensee--Repair; Alteration of Stored Vehicles Prohibited.

A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without consent of the vehicle owner or his authorized representative.

§85.721. Responsibilities of Licensee--Vehicle Transfers.

When a motor vehicle has been delivered to a VSF, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of VSF capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The VSF must send notice in accordance with these rules, except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a VSF, the licensee shall:

(1) charge only those fees otherwise permitted by §85.722 after the vehicle is towed to another location without the vehicle owner's permission;

(2) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the VSF until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and

(3) maintain a record of the ultimate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

§85.722. Responsibilities of Licensee--Storage Fees and Other Charges.

(a) For the purposes of this section, "VSF operator" includes a garage, parking lot, or other facility that is:

(1) owned by a governmental entity; and

(2) used to store or park at least 10 vehicles each year.

(b) The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(c) Notification fee.

(1) A VSF may not charge a vehicle owner more than \$50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF operator may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.

(2) If a vehicle is removed by the vehicle owner within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.

(3) If a vehicle is removed by the vehicle owner before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF operator may not charge a notification fee to the vehicle owner.

(d) Daily storage fee. A VSF operator may not charge less than \$5.00 or more than \$20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length. A VSF operator shall charge a fee of \$35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length.

(1) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(2) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.

(3) A VSF operator that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days before the date the request for owner information is sent to the appropriate governmental entity. Such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.

(4) A VSF operator shall charge a daily storage fee after notice, as prescribed in §85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF operator may charge a vehicle owner an Impoundment fee if Impoundment is performed in accordance with these rules. The Impoundment fee may not exceed \$20. If the VSF operator charges a fee for Impoundment, the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF operator may collect from a vehicle owner any fee that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(g) Environmental hazard fee. A VSF operator may collect from a vehicle owner a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(h) Additional fees. A VSF operator may not charge any additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee posted on a nonconsent towing fees schedule on file with the department and posted at the VSF.

§85.723. Responsibilities of Licensee--Disposal of Certain Vehicles.

(a) Applicability. A VSF operator may not dispose of a vehicle unless the operator has complied with all provisions of the Act,

including §§2303.151 - 2303.154 and §2303.157, concerning notification and disposal of abandoned vehicles.

(b) Documentation and records. A VSF operator shall keep complete and accurate records of any vehicle disposed of under these rules. These records shall include:

(1) a copy of all forms completed by the VSF and provided to the vehicle buyer;

(2) copies of all notifications issued to the registered owner and all recorded lienholders, regardless of whether the notifications were mailed or published; and

(3) a copy of all forms submitted to governmental authorities to dispose of and demolish an abandoned nuisance vehicle.

§85.724. Responsibilities of Licensee--Disposition of Abandoned Nuisance Vehicle.

(a) A VSF that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under §2303.151 or §2303.152 of the Act.

(b) The VSF must:

(1) notify the Texas Department of Transportation that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee to the Texas Department of Transportation; or

(2) notify the appropriate law enforcement agency and pay a fee to that agency.

(c) A law enforcement agency described by subsection (b)(2) may sign a document issued by the Texas Department of Transportation.

(d) Public sale. A VSF may dispose of a vehicle through a public sale in compliance with §2303.157 of the Act. Disputes over the sale or dispersal of proceeds from the sale of the vehicle may be pursued through a court of appropriate jurisdiction.

§85.725. Responsibilities of Licensee--Drug Testing Policy.

(a) A VSF adopting paragraphs (1) - (12) will comply with Texas Occupations Code, §2303.160.

(1) Purpose and Scope. This drug testing policy provides guidance to supervisors and VSF employees about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all VSF employees and all VSF job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2303 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug test is administered, VSF employees and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO) and the company. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's and applicant's system.

(4) Compliance with Drug Testing Policy. The failure or refusal by a VSF employee or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug testing policy is governed by these general rules:

(A) VSF employees shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) VSF employees are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) all VSF property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. VSF property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) any VSF employee convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The VSF will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).

(6) Types of Tests.

(A) Pre-employment. All applicants for positions requiring a VSF employee license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All VSF employees employed by a VSF must complete at least one scheduled drug test each year.

(C) Random Testing. In addition to annual testing, VSF employees are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of VSF employees is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a VSF employee for random urine drug testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(D) Return-to-Duty and Follow-Up.

(i) Any VSF employee who has violated this drug testing policy and is allowed to return to work must submit to a return-

to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a VSF employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The VSF employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), opiates, and alcohol.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the federal Department of Health and Human Services.

(B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs, the VSF employee has 72 hours to request sending the split specimen to another federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The VSF employee will be required to pay for his or her split specimen test(s).

(D) For the VSF employee's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the VSF employee will be notified, and the MRO will notify the company. The VSF will notify the Texas Department of Licensing and Regulation of the positive test result.

(9) Reporting and Reviewing of Drug Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the VSF employee by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the VSF employee, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to VSF Employee. The minimal distribution of information for all VSF employees will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs;

(B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;



(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the penalties that may be imposed upon VSF employees for violating the drug policy.

(11) Consequences of a Confirmed Positive Drug Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a VSF employee's positive drug test result has been confirmed, the VSF employee will stand down from VSF duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary response: the VSF employee's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug policy against VSF employees who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.

(12) Exceptions. VSF employees subject to random drug testing under Title 49 Code of Federal Regulation, Part 40 actually selected for testing in any 12-month period are exempt from the annual test requirement, so long as the VSF employee's negative test results are submitted to the MRO.

(b) Independent drug testing policy.

(1) A VSF may file an independent drug testing policy.

(2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

§85.800. Fees.

(a) Application fees.

(1) Vehicle Storage Facility License

(A) Original Application--\$250

(B) Renewal--\$250

(2) Vehicle Storage Facility Employee License

(A) Original Application--\$75

(B) Renewal--\$75

(b) Revised/Duplicate License/Certificate/Permit/Registration--\$25

(c) Risk-based Inspections--\$150

(d) Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(e) All fees are nonrefundable except as provided for by commission rules or statute.

§85.900. Administrative Sanctions and Penalties.

A person that violates Texas Occupations Code, Chapter 2303, a rule, or an order of the Executive Director or Commission relating to Chapter 2303, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2303 and applicable agency rules.

§85.1000. Technical Requirements--Facility Fencing Requirements. Enclosure and security of stored vehicles.

(1) Fencing. If not enclosed by a five-foot high fence on or before September 1, 1985, all VSFs shall be completely enclosed by a fence at least six feet high with a gate, which is locked at all times when the licensee or an agent or employee is not at the storage lot. No two VSFs may operate within the same fenced area.

(2) Security of vehicles.

(A) No vehicle may be stored or kept at any licensed VSF unless it is kept inside the fenced or enclosed area at all times. For purposes of this subparagraph, the term "enclosed" shall mean inside a building.

(B) A vehicle accepted for storage in a VSF must be secured to prevent theft of the vehicle or its contents, including but not limited to locking doors, closing windows and hatchbacks, and raising or covering convertible tops.

§85.1001. Technical Requirements--Storage Lot Surface.

All VSFs shall have an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, or caliche, that enables the safe and effective movement of stored vehicles upon all portions of the lot, both under their own power and under tow, at all times, regardless of prevailing weather conditions. The surface shall also be free of overgrown vegetation.

§85.1002. Technical Requirements--Storage Lot Lighting.

All VSFs shall maintain illumination levels adequate for nighttime release of vehicles. The term "adequate" shall mean sufficient to allow inspection of a vehicle for damage at the time of release. At a minimum, there must be one lighting fixture containing at least a 250-watt element for each 1/4 acre of storage area.

§85.1003. Technical Requirements--Storage Lot Signs.

(a) Facility information. All VSFs shall have a clearly visible and readable sign at its main entrance. Such sign shall have letters at least 2 inches in height, with contrasting background, shall be visible at 10 feet, and shall contain the following information:

(1) the registered name of the storage lot, as it appears on the VSF license;

(2) street address;

(3) the telephone number for the owner to contact in order to obtain release of the vehicle;

(4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(5) the storage lot's state license number preceded by the phrase "VSF License Number."

(b) All VSFs shall have a sign setting out the charge for storage and all other fees, which may be charged by the storage lot, including notification and impoundment fees. The sign shall include all forms of payments the VSF accepts for any charge associated with delivery or storage of a vehicle. The sign must be located so it is clearly visible to a vehicle owner at the place of payment and shall have letters at least 1 inch in height with a contrasting background.

(c) Nonconsent towing fees schedule. All VSFs shall conspicuously place a sign, at the place of payment, which states in 1-inch letters that: "Applicable schedules of nonconsent towing fees will be provided for viewing upon request by persons claiming vehicles." The nonconsent towing fees provided for viewing must match the nonconsent towing fees schedule on file with the department, as provided in these rules (relating to Nonconsent Towing Fees Schedule).

(d) Instruments accepted for release of vehicle. All VSFs shall have a sign describing the documents that may be presented by the

vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described these rules, and shall also state: "Affidavit of Right of Possession and Control Furnished Upon Request." This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, and have letters at least 1 inch in height with a contrasting background.

(e) Combination signs. A VSF may combine the signs described in subsections (b), (c), and (d), if the combination sign meets the requirements of each of the separate signs.

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 January 28, 2008.

TRD-200800449

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 9, 2008

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



## CHAPTER 86. VEHICLE TOWING

**16 TAC §§86.1, 86.10, 86.200 - 86.215, 86.400, 86.450 - 86.453, 86.500, 86.600, 86.650, 86.700 - 86.710, 86.800, 86.900, 86.901, 86.1000 - 86.1002**

The Texas Department of Licensing and Regulation ("Department") proposes new 16 Texas Administrative Code, Chapter 86, §§86.1, 86.10, 86.200 - 86.215, 86.400, 86.450 - 86.453, 86.500, 86.600, 86.650, 86.700 - 86.710, 86.800, 86.900, 86.901, and 86.1000 - 86.1002, regarding the regulation and permitting of tow trucks, and the licensing of towing operators and towing companies. These rules are necessary to implement House Bill 2094, 80th Legislature, Regular Session, 2007.

New §86.1 provides statutory authority for rule adoption.

New §86.10 defines terms used in the statute and the rules, including "advisory board," "applicant," "certificate of insurance," "commission," "consent tow," "conspicuous," "contested case," "department," "driver's license," "license holder or licensee," "nonconsent tow," "parking facility," "parking facility owner," "permit holder," "property owners' association," "public roadway," "tow truck," "towing company," "towing operator," "unauthorized vehicle," "vehicle," "vehicle owner," and "vehicle storage facility."

New §86.200 provides that a tow truck permit is required.

New §86.201 establishes the requirements for obtaining an incident management-towing permit.

New §86.202 establishes the requirements for obtaining a private property-towing permit.

New §86.203 establishes the requirements for obtaining a consent-towing permit.

New §86.204 establishes criteria for approval or denial of towing permit applications and the form of the issued permit.

New §86.205 establishes the annual permit renewal requirements for towing permits.

New §86.206 describes the content of a department issued cab card that is required for each tow truck. The section also provides for card replacement and surrender of the card on request of the department.

New §86.207 provides that a non-transferable towing operator's license is required and is valid statewide for one year from the date of issuance.

New §86.208 establishes the requirements for obtaining an incident management towing operator license.

New §86.209 establishes the requirements for obtaining a private property towing operator license.

New §86.210 establishes the requirements for obtaining a consent towing operator license.

New §86.211 establishes the annual license renewal requirements for towing operators.

New §86.212 provides that a towing company license is required and establishes the requirements for obtaining a license.

New §86.213 establishes criteria for approval or denial of a towing company license and the form of the license.

New §86.214 establishes the annual renewal requirements for a towing company license.

New §86.215 provides an additional method of notice to licensees and permit holders using the last designated e-mail address.

New §86.400 establishes the insurance requirements for obtaining and renewing a tow truck permit.

New §86.450 establishes the general requirements of a department initiated inspection of a towing company.

New §86.451 provides for bi-annual inspections of a towing company during normal business hours.

New §86.452 establishes the criteria for a risk-based inspection of a towing company.

New §86.453 provides the procedures for corrective actions following a department initiated inspection of a towing company.

New §86.500 requires electronic filing of nonconsent-towing fee schedules for nonconsent tows.

New §86.600 requires the department to file conforming nonconsent towing fee schedules on the internet without making a determination of reasonableness.

New §86.650 provides for a Towing and Storage Advisory Board. This section lists criteria of board membership, terms of office, meeting times, and board responsibilities.

New §86.700 requires that a towing company tow vehicles subject to nonconsent towing to a licensed vehicle storage facility, unless the vehicle owner agrees to a different location.

New §86.701 lists the information that must be displayed on each side of a permitted tow truck.

New §86.702 requires permit holders and licensees to notify the department of changes in name, address, and drug testing policy.

New §86.703 requires a towing company to notify the department of a change in ownership.

New §86.704 prohibits a towing company from charging unauthorized fees without written authority from the vehicle owner.

New §86.705 establishes towing company standards of conduct including: prohibitions against giving gifts of value to parking facility owners, having monetary interests in parking facilities from which it tows vehicles, nonconsent tow charges in unincorporated areas, compliance with posting requirements, record keeping, towing only from authorized locations, and charging fees consistent with those on file with the department.

New §86.706 provides that a towing company post fees at each vehicle storage facility to which it tows vehicles, signs must be conspicuous, posted fees must be provided to vehicle owners, and match fees on file with the department.

New §86.707 requires each towing company to annually review towing fees on file with the department and correct any outdated fee.

New §86.708 requires each permitted tow truck display a current license plate that includes the words "Tow Truck."

New §86.709 requires a tow company to issue a tow ticket to the vehicle owner. The tow ticket must only contain charges directly related to towing the vehicle.

New §86.710 provides a model drug testing policy for employees of a towing company; protects privacy rights of employees; and contains due process requirements.

New §86.800 establishes the fees for initial applications, renewal applications, inspection fees, and late renewals.

New §86.900 provides for administrative penalties and/or sanctions against a person that violates the statute or rules.

New §86.901 provides for cease and desist orders issued by the executive director to a person that violates the statute or rules.

New §86.1000 lists the minimum safety equipment that must be carried by each tow truck and establishes minimum operating limits for trucks issued a tow truck permit by the department.

New §86.1001 lists the minimum safety clothing that must be worn by towing operators and specifies the forms of identification that must be carried by each towing operator issued a towing operator license by the department.

New §86.1002 requires a towing company keep records for two years, and that an out-of-state towing company maintain records in Texas, or reimburse the department for expenses incurred for the review of out-of-state records.

William H. Kuntz, Jr., Executive Director of the Department, has determined that for each year of the first five-year period the new rules are in effect, there will be costs to the Department to enforce and administer these rules. The expected cost is approximately \$4,000,000 per year. Fees, which are included in the rules, have been set to generate revenues sufficient to cover these costs. There is no anticipated fiscal implication for units of local government.

Mr. Kuntz has determined that for each year of the first five-year period the new rules are in effect, the public will benefit from clarity in what is required by law of a towing company and towing operators. The rules also provide consumer protection for individuals whose vehicles are the subject of a nonconsent tow. The public will also benefit from the enhanced integrity of towing companies and their employees.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, there will be economic costs imposed on persons and businesses that are required to obtain permits and licenses under these new rules. These costs may include initial permit and licensing fees, annual renewal fees, insurance premiums, expenses for maintaining records and conducting employee drug testing.

Mr. Kuntz has also determined that, for each year of the first five-year period the proposed new rules are in effect, costs related to licensing fees, insurance, and drug testing may represent an adverse economic effect on small businesses that operate towing companies. However, the licensing fees, insurance, and drug testing costs are imposed by statute; therefore, no regulatory alternative is available. Accordingly, no regulatory flexibility analysis is necessary.

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

The new rules are proposed under Texas Occupations Code, Chapter 2308, which directs the Department's governing body, the Texas Commission of Licensing and Regulation ("Commission"), to adopt rules to establish the requirements for permitting tow trucks and licensing towing operators and towing companies, and to adopt standards of conduct for license and permit holders; and Texas Occupations Code Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2308. No other statutes, articles, or codes are affected by the proposed new rules.

§86.1. Authority and Purpose.

These rules are adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2308. These rules increase the safety of vehicle towing operators by insuring that only qualified professionals tow vehicles.

§86.10. Definitions.

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

(1) Advisory board--The Towing and Storage Advisory Board.

(2) Applicant--The person or entity submitting an application for a permit or license issued by the department.

(3) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company, approved in this state, warrants that a towing company for whom the certificate is filed has the minimum coverage as required by §86.400.

(4) Commission--The Texas Commission of Licensing and Regulation.

(5) Consent tow--Any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

(6) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(7) Contested case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(8) Department--The Texas Department of Licensing and Regulation.

(9) Driver's License--Has the meaning assigned by §521.001, Transportation Code.

(10) License holder or Licensee--The person to which the department issued a license.

(11) Nonconsent tow--Any tow of a motor vehicle that is not a consent tow.

(12) Parking facility--Public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

(A) a restricted space on a portion of an otherwise unrestricted parking facility; and

(B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

(i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and

(ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(13) Parking facility owner--

(A) an owner or operator of a parking facility, including a lessee, employee, or agent of an owner or operator;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in §202.001, Property Code, over assigned or unassigned parking areas; or

(C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in §202.001, Property Code, to use a parking space.

(14) Permit holder--The person to which the department issued a permit.

(15) Property owners' association--Has the meaning assigned by §202.001, Property Code.

(16) Public roadway--A public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(17) Tow truck--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The following motor vehicles are not considered tow trucks:

(A) a motor vehicle owned and used exclusively by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise; or

(E) a motor vehicle that is controlled or operated by a farmer or rancher and that is used for towing a farm vehicle.

(18) Towing company--An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(19) Towing operator--The person to which the department issued a towing operator license.

(20) Unauthorized vehicle--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(21) Vehicle--A device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(22) Vehicle owner--A person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(23) Vehicle storage facility--A vehicle storage facility, as defined by Texas Occupations Code, §2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

§86.200. Tow Truck Permit--Required.

(a) A tow truck may not be used for towing on the public streets or roads of this state unless an appropriate tow truck permit has been issued by the department.

(b) A separate permit is required for each tow truck.

(c) A tow truck permit is valid for not more than one year from the date of issuance. A tow truck permit shall expire on the same date as the license issued by the department to the tow truck company.

§86.201. Tow Truck--Permit--Incident Management Towing.

(a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow allowed under §545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must:

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

(2) pay the fee required under §86.800;

(3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.

(4) provide proof of insurance required under §86.400; and

(5) successfully pass a criminal background check.

(c) An incident management towing permit may also be used for private property towing and consent towing.

§86.202. Tow Truck Permit--Private Property Towing.

(a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner.

(b) To be eligible for a private property towing permit, an applicant must:

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

(2) pay the fee required under §86.800;

(3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.

(4) provide proof of insurance required under §86.400; and

(5) successfully pass a criminal background check.

(c) A private property towing permit may also be used for consent towing but not for incident management towing.

§86.203. Tow Truck Permit--Consent Towing.

(a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner, as defined in §86.10(22).

(b) To be eligible for a consent towing permit, an applicant must:

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

(2) pay the fee required under §86.800;

(3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.

(4) provide proof of insurance required under §86.400; and

(5) successfully pass a criminal background check.

(c) A consent towing permit may not be used for nonconsent towing, including incident management towing and private property towing.

§86.204. Tow Truck Permit--Approval and Issuance.

(a) The department will issue a permit under these rules to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under these rules.

(b) The department will issue a certificate containing a single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

§86.205. Tow Truck Permit--Renewal.

(a) The department will send written notice to permit holders at least 30 days before the permit expires. The notice will be sent to

the permit holder's last known address according to the records of the department.

(b) To renew a permit, a permit holder must:

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

(2) pay the fee required under §86.800;

(3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.

(4) provide proof of insurance required under §86.400; and

(5) successfully pass a criminal background check.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the permit. A late renewal means the permit holder will have an un-permitted period from the expiration date of the expired permit to the issuance date of the renewed permit. During the un-permitted period, a tow truck may not be used for towing on the public roadways of this state.

(d) Non-receipt of a permit renewal notice from the department does not exempt a person from any requirements of these rules.

§86.206. Tow Truck Cab Cards.

(a) The department will issue a cab card for each tow truck issued a permit. The cab card will:

(1) show the permit number of the certificate issued under these rules;

(2) show the type of permit issued;

(3) show the vehicle unit number;

(4) show the vehicle identification number; and

(5) contain a statement that the vehicle has a permit issued under these rules.

(b) The department will issue a cab card when the department issues or renews a permit.

(c) A permit holder must keep a copy of the cab card in the cab of each permitted tow truck.

(d) If an original cab card is lost, stolen, destroyed, or mutilated, if it becomes illegible, or if it otherwise requires replacement, the permit holder, can request that the department issue a new cab card.

(e) The department may require a permit holder to surrender the original cab card if the permit is suspended or revoked.

§86.207. Licensing Requirements--Towing Operator License.

(a) A person shall not perform towing operations without a towing operator license issued by the department.

(b) Each type of towing operator license is:

(1) valid for one year from the date of issuance;

(2) valid throughout this state; and

(3) nontransferable.

§86.208. Licensing Requirements--Incident Management Towing Operator License.

(a) An incident management towing operator's license is required to operate a tow truck permitted or required to be permitted under these rules.

(b) An applicant for an incident management towing operator's license must:

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

(2) be a licensed Texas driver;

(3) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department;

(4) successfully pass a criminal background check; and

(5) pay the fee required under §86.800.

§86.209. Licensing Requirements--Private Property Towing Operator License.

(a) A private property towing operator's license is needed to operate a tow truck permitted or required to be permitted under these rules.

(b) An applicant for a private property towing operator's license must:

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

(2) be a licensed Texas driver;

(3) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department;

(4) successfully pass a criminal background check; and

(5) pay the fee required under §86.800.

§86.210. Licensing Requirements--Consent Towing Operator License.

(a) A consent towing operator's license is needed to operate a tow truck permitted or required to be permitted under these rules.

(b) An applicant for a consent towing operator's license must:

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

(2) be a licensed Texas driver; and

(3) successfully pass a criminal background check; and

(4) pay the fee required under §86.800.

§86.211. Licensing Renewal--Towing Operators.

(a) The department will send written notice to licensees at least 30 days before the license expires. The notice will be sent to the licensee's last known address according to the records of the department.

(b) A licensee may renew a license under this chapter by:

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

(2) pay the fee required under §86.800;

(3) meet the applicable continuing education requirements;

and

(4) successfully pass a criminal background check.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a tow truck operator may not operate a tow truck on the public roadways of this state.

(d) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of these rules.

§86.212. Licensing Requirements--Towing Company License Required.

(a) A person shall not operate a towing company without a towing company license issued by the department.

(b) To be eligible for a towing company license, an applicant must:

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

(2) pay the fee required under §86.800;

(3) successfully pass a criminal background check;

(4) provide the name, and address of each partner if the applicant is a partnership;

(5) provide the name, and address of each corporate officer, including the president, secretary, and treasurer, if the applicant is a corporation;

(6) provide the name, and address of each owner of the towing company and the percentage of ownership interest each holds in the company;

(7) provide the name, and address of the operator or manager of the towing company if it is not operated or managed by one of the owners;

(8) provide the towing company's physical address, mailing address, and telephone number; and

(9) adopt the drug testing policy provided in these rules or file a drug testing policy for approval under these rules.

§86.213. Towing Company License--Approval and Issuance.

(a) Upon receipt of an application for a towing company license, the department will review the application to verify the qualifications of the applicant.

(b) If an applicant is qualified under these rules, the department will issue a towing company license to the applicant.

(c) If an applicant is determined to be not qualified under these rules, the department will advise the applicant in writing of the reasons the applicant is not qualified or the deficiencies in the application.

(d) The department may deny a towing company license application if the applicant:

(1) has had a license revoked under these rules;

(2) failed to file a completed application; or

(3) provides false, misleading, or deceptive information in the application.

(e) The department will issue a certificate containing a single unique license number for each towing company.

§86.214. Towing Company License Renewal.

(a) The department will notify the license holder at least 30 days before the date a license expires. The notice will be in writing and sent to the license holder's last known address according to the records of the department.

(b) To renew a towing company license, an applicant must:

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

- (2) pay the applicable fee required under §86.800;
- (3) successfully pass a criminal background check.

§86.215. Department Notifications to Licensee or Permit Holder.  
Unless otherwise provided for by statute or these rules, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or permit holder.

§86.400. Insurance Requirements--Tow Truck Permits.

(a) An applicant for a tow truck permit is responsible for ensuring the electronic submission of a certificate of insurance when applying for an initial license or permit, submitting a license or permit renewal, changing a business name or affiliation, and upon request of the department.

(b) The certificate of insurance must be obtained from and submitted by an insurance company licensed and authorized to do business in Texas pursuant to the Texas Insurance Code.

(c) The name and address of the applicant, licensee, or permit holder shown on the certificate of insurance form must be the same as the name and address on the application or permit. The applicant or permit holder is responsible for ensuring that the insurance information on file with the department reflects the correct name and address of the insured.

(d) Coverage.

(1) Tow truck permit applicants and permit holders must obtain insurance for each permitted tow truck that meets the following requirements:

(A) Incident Management Towing

(i) a minimum of \$500,000 liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and

(ii) a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident.

(B) Private Property Towing

(i) a minimum of \$300,000 of liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and

(ii) a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident.

(C) Consent Towing. A minimum of \$300,000 of liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo or cargo on hook) per occurrence, or both.

(2) Insurance covering permitted tow trucks must be kept in full force and effect at all times.

(3) The certificate of insurance must contain a provision obligating the insurer give the department thirty days notice before the effective date of a policy cancellation date.

(e) Replacement insurance filing.

(1) The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(A) the new insurance filing is received by the department; and

(B) a cancellation notice has not been received for previous insurance filings.

(2) The department may revoke a license if the insurance has been canceled and a replacement policy has not been filed prior to the cancellation date.

(f) Insolvency of insurance carrier. If an insurer for a tow truck permit holder becomes insolvent, is placed in receivership, or has its certificate of authority suspended or revoked and if the tow truck permit holder no longer has insurance coverage as required by these rules, the tow truck permit holder shall file with the department, not later than the 10th day after the date the coverage lapses:

- (1) evidence of insurance as required by these rules; and
- (2) an affidavit that:

(A) indicates that an accident from which the tow truck permit holder may incur liability did not occur while the coverage was not in effect; or

(B) contains a plan acceptable to the department indicating how the tow truck permit holder will satisfy claims of liability against the tow truck permit holder for an accident that occurred while the coverage was not in effect.

(g) Notices. The department will notify the Texas Department of Public Safety and other law enforcement agencies of each tow truck permit that has been revoked for failure to maintain the required insurance coverage.

§86.450. Inspections--General.

(a) A towing company shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections are performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to licensees and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the towing company. The department may conduct inspections under the Act and these rules with or without advance notice.

(c) The department inspector will contact the towing company owner, manager, or their representative upon arrival at the towing company, and before proceeding with the inspection.

(d) The towing company owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

§86.451. Periodic Inspections.

(a) Each towing company shall be inspected at least once every two years.

(b) The towing company owner, manager, or their representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.

(c) Upon completion of the inspection, the owner manager, or representative shall be advised in writing of the results of the inspection. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective actions required to address the violations, in accordance with §86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(e) Based on the results of the periodic inspection, a towing company may be moved to a risk-based schedule of inspections. The department will notify the owner of the towing company, in writing, if the company becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

§86.452. Risk-based Inspections.

(a) Risk-based inspections are those required in addition to periodic inspections required under §86.451, for towing companies determined by the department to be a greater risk to the public.

(b) To determine which towing company will be subject to risk-based inspections, the department has established criteria and frequencies for inspections.

(c) The owner of the towing company shall pay the fee required under §86.800 for each risk-based inspection, in a manner established by the department.

(d) Each towing company subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Figure: 16 TAC §86.452(d)

(e) At the time of inspection of a towing company, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by these rules.

(f) Upon completion of the inspection, the owner of the towing company shall be advised in writing of the results of the inspection.

(g) The inspection report will identify violations that must be corrected by the towing company. The report will also indicate the corrective actions required to address the violations, in accordance with §86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(h) A towing company on a risk-based inspection schedule that has no significant violations in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the towing company if there is a change in the towing company's risk-based schedule or if the towing company is returned to a periodic inspection schedule.

§86.453. Corrective Actions Following Inspection.

(a) When corrective actions to achieve compliance are required:

(1) the department shall provide the towing company a list of required corrective modification(s);

(2) within 10 days after receiving the list of required corrective actions, the owner shall complete all corrective actions and provide written verification of the corrective actions to the department; and

(3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with §86.900.

§86.500. Reporting Requirements--Towing Company.

(a) Before January 31 of each year, a towing company must submit to the department a schedule showing each towing fee the towing company charges or collects for nonconsent towing.

(1) Format. The fee schedule must be:

(A) on plain white paper measuring 8-1/2 inches by 11 inches; and

(B) clearly legible, using black ink, and typed in 12-point font.

(2) Information. The nonconsent towing fees schedule must include:

(A) the name and license number of the towing company as on file with the department;

(B) the effective date(s) of the fees; and

(C) if different fees are assessed for different geographic areas, a clear delineation between fees assessed for one area and fees assessed for another.

(b) If a political subdivision begins regulating nonconsent tow fees, the towing company must report the fees to the department before the 30th day after the municipal ordinance goes into effect.

(c) Any changes in nonconsent tow fees regulated by a political subdivision must be reported to the department by the towing company before the 30th day after the effective date of the change.

(d) Complete lists required. Each time a towing company files a nonconsent towing fees schedule, the towing company must include a complete list of all nonconsent towing fees charged by the towing company. Partial towing fee schedules are not acceptable. Each filing is a complete schedule of all nonconsent towing fees of the company.

§86.600. Responsibilities of the Department--Nonconsent Fee Schedules.

The department will:

(1) make filings of acceptable nonconsent towing fees schedules available on its internet website;

(2) reject any filing of nonconsent towing fees schedules that are not filed in accordance with this section; and

(3) make no determination as to the reasonableness of towing fees.

§86.650. Towing and Storage Advisory Board.

(a) The advisory board consists of the eight members appointed by the chairman of the commission with the approval of the commission. The eight members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one owner of a vehicle storage facility located in a county with a population of less than one-million;

(4) one owner of a vehicle storage facility located in a county with a population of one-million or more;

(5) one law enforcement officer from a county with a population of less than one-million;

(6) one law enforcement officer from a county with a population of one-million or more;

(7) one parking facility owner; and

(8) one representative of property and casualty insurers who write automobile insurance in this state.



(b) The advisory board shall include representation for each classification of towing.

(c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The chairman of the commission appoints one of the advisory board members to serve as the presiding of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of these rules, including examination content, licensing standards, and continuing education requirements.

§86.700. Responsibilities of Tow Truck Permit Holder--Storage of Towed Vehicles.

Unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner, a towing company that makes a non-consent tow shall tow the vehicle to a vehicle storage facility operated by a person who holds a vehicle storage facility license issued by the department.

§86.701. Responsibilities of Tow Truck Permit Holder--Tow Truck Signage.

(a) A tow truck permit holder must display on each permitted tow truck:

- (1) the permit holder's name;
  - (2) the permit holder's telephone number;
  - (3) the city and state where the permit holder is located;
- and
- (4) the permit number for the tow truck.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the tow truck.

§86.702. Responsibilities of Licensee and Permit Holder--Change Name, Address, or Drug Testing Policy.

(a) A licensee or permit holder shall notify the department of changes to any of following information:

(1) change in the licensee's or permit holder's name no later than the effective date of the change;

(2) change of the licensee's or permit holder's mailing or physical address no later than the effective date of the change; or

(3) change in the licensee's drug testing policy no later than 30 days before the effective date of the change.

(b) The requirements of subsection (a)(3) apply only to a towing company regulated by these rules.

§86.703. Responsibilities of Towing Company License Holder--Change of Ownership.

A towing company license holder must file an original application for licensure when there is a change in the ownership of the company, including but not limited to, a corporate merger or a change in the sole proprietorship or partnership.

§86.704. Responsibilities of Towing Company License Holder--Unauthorized Fees.

Unless authorized by Texas Occupations Code, Chapter 2308 or 16 Texas Administrative Code Chapter 85 or these rules, a towing company may not charge or collect a fee without the prior written consent of the vehicle owner or operator.

§86.705. Responsibilities of Towing Company License Holder--Standards of Conduct.

(a) A towing company may not directly or indirectly give anything of value to a parking facility owner in connection with the removal of a vehicle from a parking facility.

(b) A towing company may not have a direct or indirect monetary interest in a parking facility from which the towing company for compensation removes unauthorized vehicles.

(c) In an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, a towing company must comply with Texas Occupations Code, §2308.204.

(d) A towing company may not tow a vehicle to a vehicle storage facility unless the vehicle storage facility is in compliance with the required postings in Texas Occupations Code, §2308.207.

(e) A towing company may not remove and store an unauthorized vehicle unless authorized by Texas Occupations Code, §2308.255.

(f) A towing company may not perform a nonconsent tow unless the property from which the vehicle is towed is in compliance with Texas Occupations Code, §§2308.301 - 2308.305.

(g) Except as authorized by Texas Occupations Code, §§2308.351 - 2308.354, a towing company may not perform a non-consent tow from:

- (1) a leased right-of-way;
- (2) an area between a parking facility and a public right-of-way;
- (3) a public right-of-way; or
- (4) a public roadway.

(h) A towing company may not contract for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia or a valid inspection certificate, unless before the tow, the towing company receives copies of documents showing compliance with Texas Occupations Code, §2308.253(e).

(i) A licensee or permit holder may not charge a fee for a non-consent tow that is greater than the fee listed in the schedule most recently filed with the department.

(j) A licensee must keep record of every nonconsent tow including, but not limited to, the following information:

(1) vehicle description, including license or vehicle identification number, if available;

(2) the specific rule or statutory provision sanctioning the tow;

(3) each fact justifying the nonconsent tow;

(4) location vehicle towed from; and

(5) vehicle storage location.

(k) A towing operator must allow department personnel to inspect a tow truck permitted under these rules.

§86.706. Responsibilities of Towing Company License Holder--Required Postings at Vehicle Storage Facility (VSF).

(a) A towing company must provide its nonconsent towing fees schedule to all VSF's to which the towing company delivers vehicles for storage.

(b) The nonconsent towing fees schedule provided to the VSF and posted at the VSF must match the nonconsent towing fees schedule on file with the department.

(c) The nonconsent towing fees schedule must be posted in a conspicuous location at the VSF.

(d) The nonconsent towing fees schedule must be made available to any requestor during normal business hours of the VSF.

§86.707. Responsibilities of Towing Company License Holder--Review of Nonconsenting Fees Schedule.

A towing company that performs nonconsent tows shall review its current nonconsent towing fees schedule posted on the department website each year before January 31 to determine if it is current. The towing company must file a new nonconsent towing fees schedule when the current filing is outdated.

§86.708. Responsibilities of Towing Company License Holder--Tow Truck License Plates.

A towing company or tow truck operator must not operate or cause a tow truck to be operated on the public roadways of this State unless the tow truck displays current license plates that includes the words "Tow Truck."

§86.709. Responsibilities of Towing Company License Holder--Tow Ticket.

(a) A towing company must prepare and issue a tow ticket for each nonconsent tow.

(b) A copy of the tow ticket must be given to the vehicle owner and a copy delivered to the vehicle storage facility, or place agreed upon by the towing operator and vehicle owner.

(c) The tow ticket shall only authorize charges directly related to towing the vehicle to a designated location authorized by subsection (b).

§86.710. Responsibilities of Towing Company Licensee--Drug Testing Policy.

(a) A towing company adopting paragraphs (1) - (12) of this subsection will comply with Texas Occupations Code, §2308.158.

(1) Purpose and Scope. This drug testing policy provides guidance to supervisors and towing operators about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all towing operators and all towing operator job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2308 or Title 49 Code of Federal

Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug test is administered, towing operators and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO) and the company. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's or applicant's system.

(4) Compliance With Drug Testing Policy. The failure or refusal by a towing operator or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug testing policy is governed by these general rules:

(A) towing operators shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) towing operators are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) all towing company property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. Towing company property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) any towing operator convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The towing company will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).

(6) Types of Tests

(A) Pre-employment. All applicants for positions requiring a towing operators, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All towing operators employed by a towing company must complete at least one scheduled drug test each year.

(C) Random Testing. In addition to annual testing, towing operators are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of towing operators is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a towing operator for random urine drug testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(D) Return-to-Duty and Follow-Up.

(i) Any towing operator who has violated this drug testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a towing operator returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The towing operator will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), opiates, and alcohol.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the Federal Department of Health and Human Services.

(B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs, the towing operator has 72 hours to request sending the split specimen to another Federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The towing operator will be required to pay for his or her split specimen test(s).

(D) For the towing operator's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the towing operator will be notified, and the MRO will notify the company. The company will notify the Texas Department of Licensing and Regulation of the positive test result.

(9) Reporting and Reviewing of Drug Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the Federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the towing operator by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the towing operator, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to Towing Operators. The minimal distribution of information for all towing operators will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs;

(B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;

(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the penalties that may be imposed upon towing operators for violations of the drug policy.

(11) Consequences of a Confirmed Positive Drug Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a towing operator's positive drug test result has been confirmed, the towing operator will stand down from towing operation duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary response: the towing operator's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug policy against towing operators who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.

(12) Exceptions. Towing operators subject to random drug testing under Title 49, Code of Federal Regulation, Part 40 who are actually selected for testing in any 12 month period are exempt from the annual test requirement, so long as the towing operator's negative test results are submitted to the MRO.

(b) Independent drug testing policy.

(1) A towing company may file an independent drug testing policy.

(2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

§86.800. Fees.

(a) Application Fees

(1) Permit Tow Truck

(A) Original Application--\$75

(B) Renewal--\$75

(C) Duplicate Permit--No charge

(2) Tow Company License

(A) Original Application--\$350

(B) Renewal--\$350

(C) Duplicate License--\$25

(3) Operator License

(A) Original Application--\$100

(B) Renewal--\$100

(C) Duplicate License--\$25

(b) Risk-based inspections--\$150

(c) Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees)

(d) All fees are nonrefundable except as provided for by commission rules or statute.

§86.900. Sanctions and Administrative Penalties.

A person that violates Texas Occupations Code, Chapter 2308, a rule, or an order of the Executive Director or Commission relating to Chapters 2308, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2308 and applicable agency rules.

§86.901. Cease and Desist Order.

The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines the action is necessary to prevent a violation of this chapter and to protect public health and safety.

§86.1000. Technical Requirements--Tow Truck Safety Equipment and Truck Operations.

(a) Each tow truck must carry proper safety equipment. Proper equipment includes, but is not limited to, the following:

(1) At least one 10 pound or two 5 pound multiple purpose fire extinguisher, in good working condition;

(2) Magnetic tow lights, unless wireless, with appropriate cable and cushions to protect a vehicle's finish;

(3) Tow dollies as appropriate;

(4) Straps and tie downs as specified by the tow truck manufacturer;

(5) Gloves;

(6) Wheel chocks;

(7) Five gallon trash receptacle;

(8) Broom and shovel;

(9) Thirty-six inch crow bar; and

(10) Triangle reflectors, flares, cones, safety lights or other appropriate safety signals.

(b) Each tow truck shall:

(1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism; or

(2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch or the carry mechanism.

(c) Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects.

(d) The winch must not exceed the capacity of the boom or leak oil.

(e) The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines.

(f) Each tow truck must have a copy of the annual Department of Transportation inspection.

§86.1001. Technical Requirements--Towing Operator Safety Clothing and Identification.

(a) Towing operators, as a condition of their license must comply with the protective clothing policy.

(b) Towing operators must wear at all times when using or assisting in the use or operation of a licensed tow truck on a road or road related area:

(1) a uniform, clearly marked with the tow company's name as it appears on department records.

(2) a reflective vest or reflective jacket at all times while working outside the tow truck; the reflective vest or reflective jacket must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.

(c) During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket; the fluorescent shirt must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.

(d) When performing towing operations, all tow truck operators must carry and openly display the appropriate TDLR issued original towing operator license.

§86.1002. Technical Requirements--Towing Company Records.

(a) General records to be maintained. Except as provided in paragraphs (1) and (2), every towing company shall maintain at a principal office in Texas all records and information required by the department.

(1) Texas firms. If a towing company wishes to maintain records at a location other than its principal office in Texas, the towing company shall make a written request to the department. A tow company may not begin maintaining records at an alternate location until the request is approved by the department.

(2) Out-of-state firms. A towing company whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal office in Texas. Alternatively, a towing company may maintain such records at an out-of-state facility if the towing company reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted under these rules.

(b) Preservation and destruction of records. All books and records generated by a tow company must be maintained for not less than two years at the towing company's principal business address.

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 January 28, 2008.

TRD-200800450

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 9, 2008

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

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**TITLE 19. EDUCATION**

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 61. SCHOOL DISTRICTS

#### SUBCHAPTER AA. COMMISSIONER'S

#### RULES ON SCHOOL FINANCE

##### 19 TAC §61.1010

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Education Agency (TEA) proposes the repeal of §61.1010, concerning school finance. The section addresses standards for school district administrative cost ratios. The proposed repeal is necessary due to the repeal of the section's authorizing statute, Texas Education Code (TEC), §42.201.

TEC, §42.201, required the TEA to determine annually administrative cost ratios for school districts, to notify districts of the standards for determining these ratios, to identify districts whose administrative cost ratios exceeded the calculated ratios, and to notify these districts that they must reduce their administrative costs. Statute also required the agency to deduct funds from a district's tier one allotments if the district failed to reduce its administrative costs to the required level. The commissioner exercised rulemaking authority to adopt 19 TAC §61.1010, Standards for School District Administrative Cost Ratios, effective April 20, 1994.

Senate Bill 900, 78th Texas Legislature, Regular Session, 2003, repealed TEC, §42.201, and, therefore, removed the statutory authority for the rule.

The proposed repeal of 19 TAC §61.1010 would implement the statutory change.

Shirley Beaulieu, Associate Commissioner for Finance/Chief Financial Officer, has determined that for the first five-year period the 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.

Ms. Beaulieu 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 repeal would be adherence with statutory changes and removal of obsolete standards from rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The repeal is proposed under Senate Bill 900, 78th Texas Legislature, Regular Session, 2003, which repealed the section's authorizing statute, Texas Education Code, §42.201.

The repeal implements Senate Bill 900, 78th Texas Legislature, Regular Session, 2003.

§61.1010. *Standards for School District Administrative Cost Ratios.*

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 January 23, 2008.

TRD-200800310

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 9, 2008

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



#### SUBCHAPTER AA. COMMISSIONER'S

#### RULES ON SCHOOL FINANCE

The Texas Education Agency (TEA) proposes the repeal of and new §61.1014, concerning school finance. The section proposed for repeal addresses the determination of Foundation School Program (FSP) gains for additional state aid for school employee benefits. The proposed repeal and new rule would clarify and expand the description given in rule of the methods the TEA uses to determine, for each school district and open-enrollment charter school, eligibility to receive additional state aid to pay contributions under a group health insurance plan.

Through 19 TAC §61.1014, adopted to be effective December 2, 2001, the commissioner exercised rulemaking authority relating to determination of FSP gains. These funds are to be used by eligible school districts and open-enrollment charter schools that participate in a group health insurance plan. The proposed actions would repeal the current provisions in 19 TAC §61.1014, Determination of Foundation School Program Gains, from rule and specify the determination methods in new 19 TAC §61.1014, Additional State Aid for School Employee Benefits.

Current 19 TAC §61.1014, Determination of Foundation School Program Gains, proposed for repeal describes the methods the TEA has used to determine, for each school district and open-enrollment charter school, the amount of gain from modifications to the school finance formulas enacted by the 77th Texas Legislature, 2001. The current rule also states the times at which TEA shall make preliminary and final determinations of gains.

Proposed new 19 TAC §61.1014, Additional State Aid for School Employee Benefits, would clarify and expand the description of the methods the TEA uses to determine the FSP gains, as well as explicitly state the formula elements. The proposed new rule would also continue to set forth that the commissioner will provide reports that illustrate the computation of estimates and make preliminary and final determinations of gains.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that, for the first five-year period the repeal and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal and new section.

Ms. Beaulieu has determined that, for each year of the first five years the repeal and new section are in effect, the public ben-

efit anticipated as a result of enforcing the repeal and new section would be the clarification of existing provisions, making them easier to understand for district personnel and the general public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new section.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeal and new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

### 19 TAC §61.1014

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Education Code, §42.2514, which authorizes the commissioner of education to adopt rules to implement additional state aid for school employee benefits; and Texas Education Code, §42.260, which authorizes the commissioner to adopt rules to implement use of certain funds due to the increase made by House Bill 3343, 77th Texas Legislature, Regular Session, 2001.

The proposed repeal implements Texas Education Code, §42.2514 and §42.260.

§61.1014. *Determination of Foundation School Program Gains.*

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 January 23, 2008.

TRD-200800311

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

Earliest possible date of adoption: March 9, 2008

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



### 19 TAC §61.1014

The new section is proposed under Texas Education Code, §42.2514, which authorizes the commissioner of education to adopt rules to implement additional state aid for school employee benefits; and Texas Education Code, §42.260, which authorizes the commissioner to adopt rules to implement use of certain funds due to the increase made by House Bill 3343, 77th Texas Legislature, Regular Session, 2001.

The proposed new section implements Texas Education Code, §42.2514 and §42.260.

§61.1014. *Additional State Aid for School Employee Benefits.*

(a) In accordance with Texas Education Code (TEC), §42.2514, a school district or an open-enrollment charter school may be eligible to receive additional state aid for school employee benefits. These funds are to be used only to pay contributions under a group health insurance plan for school district or open-enrollment charter school employees.

(b) Eligibility for additional state aid for school employee benefits is determined by the extent to which 75% of the gains in the Foundation School Program (FSP) formulas resulting from the passage of House Bill (HB) 3343, 77th Texas Legislature, 2001, exceed the required contribution of school districts and open-enrollment charter schools for group health insurance coverage. The method described in paragraphs (1) - (4) of this subsection is used to determine whether a school district or an open-enrollment charter school is eligible to receive additional state aid for school employee benefits.

(1) The commissioner of education shall determine for each school district and open-enrollment charter school the amount of FSP funds gained by districts as a result of increases to the following school finance formula elements resulting from the passage of HB 3343, 77th Texas Legislature, 2001:

(A) the increase in equalized wealth level defined by TEC, §41.002, from \$295,000 per student in weighted average daily attendance (WADA) to \$305,000 per WADA; and

(B) the increase in guarantee level defined by TEC, §42.302, from \$24.70 per WADA to \$27.14 per WADA.

(2) The gain calculated in paragraph (1) of this subsection is multiplied by \$ .75.

(3) The required contribution to group health insurance is equal to the product of \$900 multiplied by the number of school district or open-enrollment charter school employees that are participating in a group health insurance plan offered by the school district or open-enrollment charter school.

(4) The school district or open-enrollment charter school is entitled to receive additional state aid for school employee benefits if the required contribution calculated in paragraph (3) of this subsection exceeds the amount calculated in paragraph (2) of this subsection. The additional state aid for school employee benefits is equal to the amount by which the amount calculated in paragraph (3) of this subsection exceeds the amount calculated in paragraph (2) of this subsection.

(c) The commissioner shall provide reports for school districts and open-enrollment charter schools that illustrate the computation of the estimates of formula gain.

(d) The commissioner shall make a preliminary determination of gain in late August of the year preceding each applicable school year and shall certify the final gain in March of the year following each applicable school year.

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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Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

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

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## SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

### 19 TAC §61.1032

The Texas Education Agency (TEA) proposes an amendment to §61.1032, concerning school facilities. The section addresses provisions relating to the instructional facilities allotment (IFA). The proposed amendment would modify the calculation of a district's wealth per student for districts affected by a defense base realignment, based on changes to statutory language, in accordance with Senate Bill 962, 80th Texas Legislature, 2007. The proposed amendment would also incorporate other updates and revisions for the IFA program, such as the addition of new definitions, establishment of procedures and time limits for reporting changes, and explanations of present value savings calculations and the effects of refinancing.

Through 19 TAC §61.1032, adopted to be effective October 13, 1997, the commissioner exercised rulemaking authority relating to assistance with payment of instructional facility debt. The current provisions include procedural and other requirements that districts applying for and receiving assistance must follow, debt eligibility requirements, limitations on assistance, a description of the data sources used in making assistance determinations, and procedures for payment of assistance.

Senate Bill 962, 80th Texas Legislature, 2007, amended TEC, §46.006, to reduce a district's wealth per student if the district must construct, acquire, or renovate instructional facilities as a result of a military base realignment. In accordance with this change, the proposed amendment to 19 TAC §61.1032 would add new language in subsection (m)(2)(D) to modify the calculation of wealth per student for districts that meet the stipulations set forth in amended TEC, §46.006.

The proposed amendment to 19 TAC §61.1032 would also incorporate the following updates and revisions.

Subsection (a) would be revised to modify the definition of debt service in paragraph (4) and to add new paragraph (6) to define the term "interest rate management agreement."

Subsection (b) would be revised to clarify that a separate application must be completed for each debt issue or lease-purchase agreement proposed for funding.

Subsection (d) would be revised to clarify debt eligibility requirements, including the addition of new language in paragraphs (6) and (7) and new paragraph (8). Paragraph (6) would address refinancing bonded debt. Paragraph (7) would specify reporting requirements that a district must follow when it makes a change to any IFA-supported bonds or IFA-supported lease-purchase agreement. New paragraph (8) would establish a state aid penalty for failure to disclose such a change and explain how IFA eligibility is regained after it has been lost as a result of failing to report a change.

Subsection (d) would also be revised to add new paragraph (9) to address refunding bonds. New paragraph (9)(C) would define present-value savings and requires a district's financial advisor to certify present-value savings. New paragraph (9)(D) would explain that a conversion of the period, mode, or index used to determine the interest rate for eligible debt will not be considered a refunding of the debt. New paragraphs (9)(E) and (9)(F) would explain how the refinancing of debt multiple times may affect its

eligibility for IFA aid and cause it to be considered for conversion to Existing Debt Allotment eligibility.

Subsequent paragraphs in subsection (d) would be renumbered and updated accordingly. Changes in the renumbered paragraphs include revisions in new paragraph (10)(B) to remove from IFA eligibility any debt service associated with a lease-purchase agreement that has been refinanced for a term of fewer than eight years. Also, new paragraph (13) would address debt entered into through an interest rate management agreement.

Subsection (f) would be revised to address potential increased IFA support.

Subsection (g) would be revised to clarify how a change in debt service requirements may affect the allotment awarded.

Subsection (h) would be revised by modifying paragraph (6) and adding new paragraph (7). The modification to paragraph (6) would require that adjustments to state assistance for any reason be requested within a three-year time limit. New paragraph (7) would require that a district submit an up-to-date debt service schedule after any financing activity in order for bond issues and lease-purchase agreements and their related debt service payments to remain eligible to receive IFA state assistance.

Subsection (i) would be revised to establish a method for allocation of debt service between eligible and ineligible categories.

Subsection (j) would be revised by modifying paragraph (1) and adding new paragraph (6). The modification to paragraph (1) would explain that requests for payments and/or adjustments submitted to TEA after December 15 will be processed with the payments due for the following fiscal year. New paragraph (6) would require that adjustments to state assistance for any reason be requested within a three-year time limit.

Subsections (k), (l), and (p) would be revised to incorporate technical edits.

Subsection (s) would be revised to clarify supplemental filings for fixed-rate bonds.

Subsection (t) would be revised to require that a district notify the commissioner of IFA-related financing activities by submitting an amended application packet. New paragraph (2) would define the materials that make up a complete amended application packet.

Relating to procedural and reporting implications, the proposed amendment includes the addition of new language in subsection (m)(2)(D), which would incorporate the provisions of Senate Bill 962, 80th Texas Legislature, 2007, and the provisions of amended TEC, §46.006, and require districts that are eligible for a modified calculation of their wealth per student as a result of a military base realignment to provide documentation from the U.S. Department of Defense describing the impact of the base realignment on the local school district. Districts also will be required to disclose interest rate management transactions in their final official statements, though this appears to be a common practice and will not likely result in a change in the way of doing business for most districts.

Also, subsection (b) addresses the requirement for the submission of supplemental information to reflect changes in amounts and conditions related to debt. In conjunction with the proposed rule amendment, the Schedule 4A of the Standard Application System for IFA state aid has been revised to ask a district for several new pieces of information. The schedule now requires a district to list the comptroller's registration number associated

with a bond issue or, for amended applications, the registration number associated with the original bond issue and with the refinanced bond issue. It also requires a district to indicate whether the application is the first submitted for a proposed debt issue, provide identifying information for any previous application(s) for the proposed debt issue, and indicate whether the application is an amended application.

Locally maintained paperwork requirements resulting from the proposed amendment to 19 TAC §61.1032 would correspond with and support the stated procedural and reporting implications.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Beaulieu has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment include the requirement to disclose interest rate management agreements which will provide greater transparency in school district transactions. The modification of the calculation of wealth per student for districts affected by military base realignments will help these districts absorb costs associated with the realignments. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §46.002, which authorizes the commissioner of education to adopt rules for the administration of Texas Education Code, Chapter 46, Assistance with Instructional Facilities and Payment of Existing Debt, Subchapter A, Instructional Facilities Allotment.

The proposed amendment implements the Texas Education Code, §46.002.

§61.1032. *Instructional Facilities Allotment.*

(a) Definitions. The following definitions apply to the instructional facilities allotment (IFA) governed by this section:

(1) Instructional facility--real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by Texas Education Code (TEC), §28.002.

(2) Noninstructional facility--a facility that may occasionally be used for instruction, but the predominant use is for purposes other than teaching the curriculum required by TEC, §28.002.

(3) Necessary fixture--equipment necessary to the use of a facility for its intended purposes, but which is permanently attached to the facility, such as lighting and plumbing.

(4) Debt service--as used in this section, debt service shall include regularly scheduled payments of principal and interest that are made between September 1 and August 31 each year on general obligation bonded debt or the underlying bonded debt applicable to [amount of a payment under] an eligible lease-purchase agreement as reported in the final official statement (FOS) or in the bond order, if the bonds are privately placed, to the state information depository. Debt service payments that are not reported to the state information depository are not eligible to receive IFA state assistance [arrangement].

(5) Allotment--~~represents~~ the amount of eligible debt service that can be considered for state aid. The total allotment is made up [comprised] of a combination of state aid and local funds. The state share and local share are adjusted annually based on changes in average daily attendance (ADA), property values, and debt service.

(6) Interest rate management agreement--an agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, debt derivative transaction, or hedge transaction, for a transaction similar to those types of transactions, or for a combination of any of those types of transactions, as described in the Texas Government Code, §1231.001.

(b) Application process. A school district must complete a separate [an] application requesting funding under the IFA for each debt issue or lease-purchase agreement proposed for funding [Instructional Facilities Allotment (IFA)]. The commissioner of education may require supplemental information to be submitted at an appropriate time after the application is filed to reflect changes in amounts and conditions related to the debt. The application shall contain at a minimum the following:

(1) a description of the needs and projects to be funded with the debt issue or other financing, with an estimate of cost of each project and a categorization of projects according to instructional and noninstructional facilities or other uses of funds;

(2) a description of the debt issuance or other financing proposed for funding, including a projected schedule of payments covering the life of the debt;

(3) an estimate of the weighted average maturity of bonded debt; and

(4) drafts of official statements or contracts that fully describe the debt, as soon as available.

(c) District eligibility. All school districts legally authorized to enter into eligible debt arrangements as defined in subsection (d) of this section are eligible to apply for an IFA.

(d) Debt eligibility. In order to be eligible for state funding under this section, a debt service requirement must meet all of the criteria of this subsection.

(1) The debt service must be an obligation of a ~~the~~ school district that [which] is entered into pursuant to the issuance of bonded debt under TEC, Chapter 45, Subchapter A; an obligation for refunding bonds as defined in TEC, §46.007; or an obligation under a lease-purchase agreement [arrangement] authorized by Local Government Code, §271.004.

(2) Application for funding of bonded debt service must be received at the Texas Education Agency (TEA) before [prior to] the date on which a district or its representatives price the bonds [passage of an order by the school district board of trustees authorizing the bond issuance].

(3) Application for funding of lease-purchase payments must be received at the TEA before [prior to] the passage of an order



by the school district board of trustees authorizing the lease-purchase agreement [arrangement].

(4) Eligible bonded debt must have a weighted average maturity of at least eight years. The term of a lease-purchase agreement must be for at least eight years. For purposes of this section, a weighted average maturity shall be calculated by dividing bond years by the issue price, where "bond years" is defined as the product of the dollar amount of bonds divided by 1,000 and the number of years from the dated date to the stated maturity, and "issue price" is defined as the par value of the issue plus accrued interest, less original issue discount or plus premium.

(5) Funds raised by the district through the issuance of bonded debt must be used for an instructional facility purpose as defined by TEC, §46.001. The facility acquired by entering into a lease-purchase agreement must be an instructional facility as defined by TEC, §46.001.

(6) If the bonded debt is for a refinancing [refunding] or a combination of refinancing [refunding] and new debt, the refinanced [refunding] portion must meet the same eligibility criteria with respect to dates of first debt service as a new issue as defined by TEC, §46.003(d)(1). The method used for the allocation of debt service between qualified and nonqualified projects and between eligible and ineligible debt will be applied to the debt service schedule resulting from a refinancing of IFA-supported debt.

(7) An amended application packet is required for any IFA-supported bonds or IFA-supported lease-purchase agreement that has undergone changes, including, but not limited to, refinancing, restatement, or any other transaction that materially affects the terms of the bonds or the terms of the lease-purchase agreement, including transactions that materially affect the terms of the underlying bonds. Amended application packets must be submitted to the TEA no later than 180 days following the date on which the transaction was approved by the attorney general, if the transaction required approval by the attorney general. If approval by the attorney general was not required, the amended application packet is due within 180 days of the date that the school board approved the transaction. [eligible refunding bonds; regardless of whether a complete or partial refunding is accomplished. Refunding bonds must also meet the following three criteria as defined by TEC, §46.007:]

{(A) Refunding bonds may not be called for redemption earlier than the earliest call date of the bonds being refunded.}

{(B) Refunding bonds must not have a maturity date later than the final maturity date of the bonds being refunded.}

{(C) The refunding of bonds must result in a present value savings, which is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings shall be computed at the true interest cost of the refunding bonds.}

(8) Failure to submit the amended application packet to the TEA division responsible for state funding within the 180-day period defined in paragraph (7) of this subsection will result in the suspension of IFA state aid payments for the applicable IFA allotment award. This suspension has the following effects.

(A) Debt service payments associated with the applicable IFA allotment will be disqualified for IFA state aid upon expiration of the 180-day period defined in paragraph (7) of this subsection. Debt service payments made after the 180-day period expires will not earn IFA state aid.

(B) IFA state aid associated with the applicable allotment will resume on the date the amended application packet, including any required supporting documentation, is received. The IFA state aid will be based on eligible debt service payments scheduled on or after the date the amended application packet is received.

(C) Current and future IFA state aid payments may be adjusted to reflect the disqualified debt service payments. If no IFA state aid is due in a fiscal year that is affected by such an adjustment, a district will be notified about the disqualified amount and will be required to remit that amount to the TEA no later than 30 days after notification.

(D) Unless otherwise requested, payments of IFA state aid based on the updated eligible debt service reported in the completed amended application packet shall be made with the payments due for the following fiscal year in accordance with TEC, §46.009(d).

(9) Refunding bonds must also meet the following criteria, the first three of which are defined by TEC, §46.007.

(A) Refunding bonds may not be called for redemption earlier than the earliest call date of the bonds being refunded.

(B) Refunding bonds must not have a final maturity date later than the last day of the last fiscal year applicable to the final maturity date of the bonds being refunded.

(C) The refinancing of bonds must result in a present value savings, which is determined by computing the net present value of the difference between each scheduled payment on the original bonds, or on the most recently approved debt service schedule, if the bonds have been previously modified, and each scheduled payment on the newly revised debt applicable to the modified bonds.

(i) Present value savings for fixed rate bonds shall be computed at the true interest cost of the refinanced bonds.

(ii) In a refinancing of variable rate bonds with fixed rate bonds, present value savings will be calculated based on:

(I) an assumed interest rate for the variable rate bonds equal to the Municipal Market Data index (or other comparable index) of "AAA" general obligation tax-exempt bonds for the month in which the bonds were originally issued; and

(II) the rate, if any, used to determine the amount deposited into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds in a variable rate mode.

(iii) In a refinancing of fixed rate bonds with variable rate bonds, present value savings will be calculated based on an assumed interest rate for the variable rate bonds equal to the ten-year average of the Municipal Market Data index (or other comparable index) of "AAA" general obligation tax-exempt bonds bearing interest in a variable rate mode comparable to the variable rate mode in which the refinanced bonds will be issued.

(iv) The financial advisor to a district must certify the projected net present value savings for refinancing described in clause (ii) and (iii) of this subparagraph based on the parameters prescribed therein. The district's financial advisor to the refinancing transaction must sign and date the certification. The district must submit the certification to the TEA division responsible for state funding no later than 180 days after the date the refunding bonds were approved for sale by the attorney general if refunding bonds are issued. If refunding bonds are not issued, the district must submit the certification no later than 180 days after the refinancing transaction is approved by the school district board of trustees. The district must submit the certification in a format prescribed by the commissioner.

(D) A conversion of the period, mode, or index used to determine the interest rate for eligible debt in accordance with the order authorizing the issuance or delivery of such eligible debt shall not be considered a refunding of eligible debt, and a district shall be eligible for state funding assistance based on the new debt service schedule contingent upon receipt of the required amended application packet as defined in paragraph (7) of this subsection.

(E) Effective January 1, 2008, a district may refinance IFA-supported debt up to two times after the issuance of the original IFA-supported debt. Upon the third refinancing transaction, the TEA will evaluate the IFA-supported debt for conversion to the Existing Debt Allotment (EDA) program. Determination of eligibility for conversion will be based on the district's remaining capacity in the EDA program and the district's other IFA-supported debt. The TEA will notify the district of the results of this evaluation within 180 days of receiving notification of the third refinancing transaction involving an IFA-supported debt.

(F) Debt that has been refinanced three or more times before January 1, 2008, will be evaluated for possible conversion and districts will be notified of the results of that evaluation no later than January 1, 2009. This subparagraph expires January 1, 2009.

(10) ~~(8)~~ Certain other refinanced debt may be eligible for the funding under this subsection.

(A) When a district issues a general obligation bond to acquire a facility that is the subject of an existing lease-purchase agreement ~~arrangement~~ of the district or refinances an existing lease-purchase agreement with another lease-purchase agreement, the transaction is considered a refinancing of the lease-purchase agreement ~~lease purchase~~ for purposes of continued participation in the IFA program. Any transactions affecting the lease-purchase agreement, including those that affect the underlying bonds, are subject to the amendment requirements and eligibility criteria specified in paragraphs (7) - (9) of this subsection, including the restrictions related to early redemption and extension of maturity dates, and the requirement for the refinancing transactions to produce present value savings.

(B) A lease-purchase agreement ~~If a lease purchase~~ in the IFA program that is refinanced with a general obligation bond or another lease-purchase agreement at a present value savings and without extension of the original term of the lease-purchase agreement~~; the debt~~ shall remain part of the IFA program. Any transaction that reduces the term of the lease-purchase agreement to less than eight years will result in the disqualification of IFA state aid on debt service that is associated with the lease-purchase agreement, beginning with the date that the transaction is approved by the school district board of trustees.

(C) Any portion of a bond issue that refinances a portion of a lease-purchase agreement ~~arrangement~~ that was originally ineligible for IFA funding shall remain ineligible. Ineligible debt includes ~~is~~ refunded bonds that fail to meet the criteria under TEC, §46.007, and/or bonds used for purposes not meeting the definition of qualified projects as described in TEC, §46.001 and §46.002.

(D) Any portion of a bond issue that refinances a portion of an original lease-purchase agreement ~~arrangement~~ that was eligible for IFA consideration but exceeded the IFA limit shall not be eligible for consideration in future funding cycles.

(E) General obligation bonded debt that is used to refinance a lease-purchase agreement ~~If a lease purchase~~ that is not in the IFA program ~~is refinanced with a general obligation bonded debt, the bonded debt~~ shall gain eligibility for the IFA by the terms of that program. Any interest and sinking ~~Interest and Sinking~~ (I&S) fund tax effort associated with the bonded debt payments may be counted for

purposes of computing the IFA. For the refinancing to ~~be~~ considered for IFA funding, a ~~the~~ district must submit an application ~~shall be required to apply~~ to the program that identifies the refinancing as a new debt before the refinancing of the lease-purchase agreement.

(F) If any portion of a maturity of an IFA ~~bonded~~ debt is refinanced ~~refunded~~ at a present value cost or with an extension of the term beyond the fiscal year in which the final maturity occurs in the original debt service schedule, the entire amount of annual debt service associated with that maturity~~; that portion of the debt~~ shall be removed from eligibility for further IFA state aid ~~tax effort equalization~~.

(G) Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of EDA funding consideration ~~pursuant to the Existing Debt Allotment (EDA)~~.

(11) ~~(9)~~ In addition to I&S fund taxes collected in the current school year, other district funds budgeted for the payment of bonds may be eligible for the IFA program for the purpose of meeting local share requirements pursuant to Texas Education Code, Chapter 46.

(A) Funds budgeted by a district for payment of eligible bonds may include I&S fund taxes collected in the 1999-2000 school year or a later school year in excess of the amount necessary to pay the district's local share of debt service on bonds in that year, provided that the taxes were not used to generate other state aid.

(B) Funds budgeted by a district for payment of eligible bonds may include maintenance and operations ~~Maintenance and Operations~~ (M&O) taxes collected in the 1999-2000 school year or a later school year that are in excess of amounts used to generate other state aid.

(C) The commissioner will provide each district with information about what tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year.

(D) ~~The Districts must inform the~~ commissioner of education will determine the amount of excess collections ~~amounts~~, if any, to be applied to the IFA local share requirement ~~if such contributions are derived from current or preceding year tax collections not equalized by state assistance~~.

(12) ~~(10)~~ If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the IFA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the final statement stipulates the requirements of the I&S fund and the bond covenant.

(13) If a district enters into an interest rate management agreement related to debt that is supported by IFA funds, the district shall provide a schedule or schedules demonstrating the anticipated effect of the interest rate management agreement on the debt service for the related bonds within 180 days of entering the interest rate management agreement, subject to the provisions of paragraph (8) of this subsection.

(14) ~~(11)~~ I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year ~~debts~~, second to satisfy the local share requirements of any ~~IFA~~ debts eligible for IFA state aid for that school year, and third ~~lastly~~ to excess taxes that may raise

the limit for the EDA program in a subsequent biennium if collected in the second year of a state fiscal biennium.

(15) ~~[(42)]~~ When the TEA considers an ~~[considering]~~ application for IFA funding, ~~the TEA shall remove from consideration under the IFA program any [a] debt that [which] meets the eligibility requirements of the EDA program unless a district's existing debt tax rate exceeds the limit [will be removed from consideration under the IFA program to the extent that the debt may be funded by the EDA up to the limits that apply] for that program described in TEC, §46.034, during the year in which the IFA application is evaluated [biennium in which EDA funding would first be available].~~

(e) Biennial limitation on access to allotment. The cumulative amount of new debt service for which a district may receive approvals for funding within a biennium shall be the greater of \$100,000 per year or \$250 per student in average daily attendance per year. A district may submit multiple applications for approval during the same biennium. Timely application before executing the bond order for bonds or authorizing the order for a lease-purchase agreement must be made to ensure eligibility of the debt for program participation. The calculation of the limitation on assistance shall be based on the highest annual amount of debt service that occurs within the state fiscal biennium in which payment of state assistance begins.

(f) Additional applications. For previously awarded debt, increases in a district's debt allotment to pay for increases in debt service payment requirements in subsequent biennia must receive approval through one or more additional application(s). The portion of any increase in eligible, qualified debt service that may be funded in subsequent biennia is the amount that exceeds any previously awarded and approved allotments, within the biennial limitation on funding as calculated at the time of approval of the additional applications. If additional IFA state aid is approved, the allotment limit will be amended to reflect the increased IFA support for the applicable debt issuance.

(g) Finality of award. Awards of assistance under TEC, Chapter 46, will be made based on the information available to TEA at the deadline for receipt of applications for that application cycle. Changes in the terms of the issuance of debt, either in the length of the payment schedule or the applicable interest rate, that occur after the time of the award of assistance will not result in an increase in the debt service considered for award. ~~[Any reduction in debt service requirements resulting from changes in the terms of issuance of debt shall result in a reduction in the amount of the award of assistance.]~~

(1) Any reduction in debt service requirements resulting from changes in the terms of issuance of debt shall result in a reduction in the amount of the award of assistance. Such a reduction in debt service requirements may result in an adjustment to the allotment awarded for the last application on the prioritization list to receive funding during an application cycle, if that application was not fully funded because of a lack of sufficient appropriations. In no case will changes to debt service amounts result in the awarding of additional IFA allotments for other eligible applications that were not funded during that application cycle because of a lack of sufficient appropriations.

(2) Refinancing of the bonds or lease-purchase agreements that receive IFA state aid may result in amendments to the allotment for the original IFA-supported debt issuance and may result in the designation of allotment amounts to be associated with the new debt issuances that include refundings of the original IFA-supported debt issuance.

(h) Data sources.

(1) For purposes of determining the limitation on assistance and prioritization, the projected ADA [average daily attendance] as adopted by the legislature for appropriations purposes shall be used.

(2) For purposes of prioritization, the final property values certified by the comptroller of public accounts [Comptroller of Public Accounts] for the tax year preceding the year in which assistance is to begin shall be used. If final property values are unavailable, the most recent projection of property values shall be used.

(3) For purposes of both the calculation of the limitation on assistance and prioritization, the commissioner may consider, before [prior to] the deadline for receipt of applications for that application cycle, adjustments to data values determined to be erroneous.

(4) For purposes of prioritization, enrollment increases over the previous five years shall be determined using Public Education Information Management System (PEIMS) submission data available at the time of application.

(5) For purposes of prioritization, outstanding debt is defined as voter-approved bonded debt or lease-purchase debt outstanding at the time of the application deadline.

(6) All final calculations of assistance earned shall be based on property values as certified by the comptroller [Comptroller] for the preceding school year, and the final ADA [average daily attendance] for the current school year. A district must request any adjustment to state assistance based on changes in the final ADA, property values, or debt service or based on any other reason no later than three years following August 31 of the state fiscal year for which the adjustment is sought.

(7) For the TEA to determine eligible debt service applicable to eligible bonded debt or the underlying bonds of an eligible lease-purchase agreement, the debt service schedule a district submits on the application must reflect the debt service schedule the district reported in the FOS or, if no FOS is prepared, in the final bond order or other official document describing the relevant financing activity, including a final debt service schedule. Failure to submit the required amended application packet to the TEA following any refinancing transaction as required by subsection (d)(7) of this section will result in the disqualification of debt service as prescribed in subsection (d)(8) of this section. IFA state aid for debt service payments that are later determined to be disqualified may be recovered through the reduction of future IFA state aid payments for the affected debt issuance.

(i) Allocation of debt service between qualified and nonqualified projects. Debt service shall be allocated between ~~[among]~~ qualified and nonqualified purposes and ~~between [among]~~ eligible and ineligible categories of debt. The method used for allocation between ~~[among]~~ qualified and nonqualified purposes shall be on the basis of pro rata value of the instructional facility versus the noninstructional purposes over the life of the debt service~~], unless a different basis is indicated in the bond order].~~ The method of allocation of debt service between eligible and ineligible categories shall be on the basis of the pro rata value of the refinanced portion of the bond issue versus the new money portion of the bond issue. [must be the same method selected for approval by the Attorney General.] The method used for the allocation of debt service between qualified and nonqualified projects and between eligible and ineligible debt will be applied to the debt service schedule for the original bond issuance and for the revised debt service schedule that results from the refinancing of IFA-eligible bonds. This allocation method will also be applied to determine the eligible and qualified portions of the debt service on the bonds that are issued to refinance IFA-supported debt. Total IFA-eligible debt service for refinanced bonds is determined by the following method.

(1) The amount of remaining debt service on the original IFA-funded debt service must be reflected in the revised debt service schedule reported in the FOS, or (if no FOS is prepared) in a schedule submitted to the TEA, for that bond issue. The amount of IFA-related

debt service for this bond series will be determined using the same pro rata allocation that was used to allocate the debt service for the original IFA allotment award as described in this subsection.

(2) The portion of the IFA-eligible debt service on the bond issue that refunds the IFA-supported debt is determined by:

(A) multiplying the debt service on the refunding bonds by the ratio that results from dividing the principal of refunding bonds by the total issue amount to determine the amount of IFA-related debt service associated with the refunding bonds; and

(B) then allocating the IFA-related debt service associated with the refunding bonds using the same pro rata allocation that was used to allocate the debt service for the original IFA allotment award as described in this subsection.

(3) The total amount of qualified, eligible IFA-related debt service is determined by the sum of IFA-related debt service as determined in paragraphs (1) and (2) of this subsection.

(j) Payments and deposits.

(1) Payment of state assistance shall be made as soon as practicable after September 1 of each year. No payments shall be made until the execution of the bond order or the authorization of the lease-purchase agreement, whichever is applicable, has occurred. Requests for payments and/or adjustments submitted to the TEA after December 15 shall be processed with the payments due for the following fiscal year in accordance with TEC, §46.009(d). Debt service for IFA-supported debt that is subject to the provisions of subsection (d)(7) of this section because of a refinancing or other transaction as described in subsection (d) of this section is not eligible for IFA state aid until a complete amended application packet has been submitted to the TEA, subject to the provisions of subsection (d)(8) of this section.

(2) Funds received from the state for bonded debt must be deposited to the I&S ~~[interest and sinking]~~ fund of the school district and must be considered in setting the tax rate necessary to service the debt.

(3) Funds received from the state for lease-purchase agreements must be deposited to the general fund of the district and used for lease-purchase payments.

(4) A final determination of state assistance for a school year will be made using final attendance data and property value information as may be affected by TEC, §42.257. Additional amounts owed to districts shall be paid along with assistance in the subsequent school year, and any reductions in payments shall be subtracted from payments in the subsequent school year.

(5) As an alternative method of adjustment of payments, the commissioner may increase or decrease allocations of state aid under TEC, Chapter 42, to reflect appropriate increases or decreases in assistance under TEC, Chapter 46.

(6) Adjustments to state assistance based on changes in the final counts of ADA, changes to a district's property value, changes in the debt service schedule, or changes for any other reason must be requested no later than three years following the close of the school year for which the adjustment is sought. Changes to the debt service schedule will be subject to the provisions of subsection (d)(8) of this section, including the disqualification of debt service associated with a refinancing transaction as described in subsection (d)(7) of this section, if deadlines for reporting the refinancing transaction have not been met.

(k) Approval of attorney general ~~[Attorney General]~~ required. All bond issues and all lease-purchase agreements ~~[arrangements]~~ must

receive approval from the attorney general ~~[Attorney General]~~ before a deposit of state funds will be made in the accounts of the school district.

(l) Deadlines.

(1) The commissioner of education shall conduct an annual application cycle with a deadline of June 15 or the next working day after June 15 every year based on the availability of appropriations for the purpose of awarding new allotments. If no funding is available, the commissioner shall cancel the June 15 deadline. ~~[The commissioner may conduct more than one application cycle to allocate funding appropriated for a fiscal year.]~~

~~[(2) If funds are still available after conducting the June 15 annual cycle, the commissioner shall announce the TEA's intention to have an additional application cycle no less than 90 days prior to the application deadline.]~~

(2) ~~[(3)]~~ The commissioner shall establish the relevant limit on the date of first debt service payment from property taxes for eligible bonded debt that will be considered for funding in the announced application cycle.

(3) ~~[(4)]~~ An application received after the deadline shall be considered a valid application for the subsequent period unless withdrawn by the submitting district before the end of the subsequent period.

(4) ~~[(5)]~~ If the ~~[execution of the]~~ bond order or the ~~[authorizing of a]~~ lease-purchase agreement has not been approved by the attorney general ~~[taken place]~~ within 180 days of the deadline for the current application cycle, the TEA shall consider the application withdrawn.

(5) ~~[(6)]~~ The school district may not submit an application for bonded debt ~~before [prior to]~~ the successful passage of an authorizing proposition. The election to authorize the debt must be held ~~before [prior to]~~ the close of the application cycle. An application for a lease-purchase agreement may not be submitted ~~before [prior to]~~ the end of the 60-day waiting period in which voters may petition for a referendum, or until the results of the referendum, if called, approve the agreement.

(m) Prioritization and notice of award. Upon close of the application cycle, all eligible applications shall be ranked in order of property wealth per student in ADA ~~[average daily attendance]~~. State assistance will be awarded beginning with the district with the lowest property wealth and continue until all available funds have been ~~used [utilized]~~. Each district shall be notified of the amount of assistance awarded and its position in the rank order for the application cycle. A district's wealth per student may be reduced if any or all of the following criteria are met.

(1) A district's wealth per student is first reduced by 10% if the district does not have any outstanding debt at the time the district applies for assistance.

(2) A district's wealth per student is next reduced if a district has had substantial student enrollment growth in the preceding five-year period. For this purpose, the district's wealth per student is reduced:

(A) by 5.0%, if the district has an enrollment growth rate in that period that is 10% or more but less than 15%;

(B) by 10%, if the district has an enrollment growth rate in that period that is 15% or more but less than 30%; ~~[or]~~

(C) by 15%, if the district has an enrollment growth rate in that period that is 30% or more; or [-]

(D) by 25%, if the district demonstrates, in a manner prescribed by the commissioner, that the district must construct, acquire, renovate, or improve one or more instructional facilities to serve the children of military personnel transferred to a military installation in or near the district under the Defense Base Closure and Realignment Act of 1990 (10 USC §2687). To qualify for this reduction, the district must include in its application for IFA funding one or more project descriptions for facilities that will serve the children of military personnel who are transferred to the military installation in or near the district. This subparagraph expires September 1, 2012.

(3) If a district has submitted an application with eligible debt and has not previously received any assistance due to a lack of appropriated funds, its property wealth for prioritization shall be reduced by 10% for each biennium in which assistance was not provided. The reduction is calculated after reductions for outstanding debt and enrollment are completed, if applicable. This reduction in property wealth for prioritization purposes is only effective if the district actually entered the proposed debt without state assistance before [prior to] the deadline for a subsequent cycle for which funds are available.

(n) Bond taxes. A school district that receives state assistance must levy and collect sufficient eligible taxes to meet its local share of the debt service requirement for which state assistance is granted. Failure to levy and collect sufficient eligible taxes shall result in pro rata reduction of state assistance. The requirement to levy and collect eligible taxes specified in this subsection may be waived at the discretion of the commissioner for a school district that must maintain local maintenance tax effort in order to continue receiving federal impact aid.

(o) Exclusion from taxes. The taxes collected for bonded debt service for which funding under TEC, Chapter 46, is granted shall be excluded from the tax collections used to determine the amount of state aid under TEC, Chapter 42. For a district operating with a waiver as described in subsection (n) of this section, the amount of the local share of the allotment shall be subtracted from the total tax collections used to determine state aid under TEC, Chapter 42.

(p) Calculation of bond tax rate (BTR) for lease-purchase agreements [arrangements]. The value of BTR in the formula for state assistance for a lease-purchase agreement [arrangement] shall be calculated based on the lease-purchase payment requirement, not to exceed the relevant limitations described in this section. The lease-purchase payment shall be divided by the guaranteed level (FYL), then by ADA [average daily attendance (ADA)], and then by 100. The value of BTR shall be subtracted from the value of district tax rate (DTR) as computed in TEC, §42.302, before [prior to] limitation imposed by TEC, §42.303.

(q) Continued treatment of taxes and lease-purchase payments. Taxes associated with bonded debt may not be considered for state aid under TEC, Chapter 42. Bonded debt service or lease-purchase payments that were excluded from consideration for state assistance due to prioritization or due to the limitation on assistance may be considered for state assistance in subsequent biennia through additional applications. A modified application may be provided for previously rejected debt service or lease-purchase payments.

(r) Variable rate bonds. Variable rate bonds are eligible for state assistance under the IFA. For purposes of calculating the biennial limitation on access to the allotment, the payment requirement for a variable rate bond shall be valued at the minimum amount a district must budget for payment of interest cost and the scheduled minimum mandatory redemption amount, if applicable. For purposes of calculating state assistance under TEC, Chapter 46, the lesser of the actual payment or the limitation on the allotment shall be used. A district may exercise its ability to make payments in amounts in excess of the mini-

um, but the excess amount shall not be used in determining the value of BTR or in the calculation of state assistance under TEC, Chapter 46, in that year.

(s) Fixed-rate bonds. Computation for fixed-rate bonds shall be based on published debt service schedules as contained in the FOS or, for a private placement, in a supplemental filing with the TEA [official statement]. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the IFA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.

(t) Reports required. The commissioner shall require such information and reports as are necessary to assure compliance with applicable laws. [The commissioner shall require immediate notification by the district of relevant financing activities such as refunding or refinancing of bond issues, renegotiation of lease-purchase terms, change in use of bond proceeds, or other actions taken by the district that might affect state funding requirements.]

(1) The commissioner shall require immediate notification by a district of relevant financing activities as described in subsection (d)(7) of this section. Failure by a district to make such notification will result in the disqualification of debt service from IFA state aid as described in subsection (d)(8) of this section. A district is also required to report changes in use of bond proceeds or other actions taken by the district that might affect state funding requirements by submitting a complete amended application packet. Failure to submit the amended application packet will result in the suspension of IFA state aid payments for the applicable IFA allotment award, as described in subsection (d)(8) of this section.

(2) A complete amended application packet, as prescribed by the commissioner, includes:

(A) the appropriate schedules needed to identify the original IFA allotment award or the most recently approved revised allotment award including the assigned document control number and changes to the title of the debt issuance, the authorization to issue the debt, and other relevant terms;

(B) the appropriate schedules needed to describe changes in the use of the bond proceeds, if applicable;

(C) the appropriate schedules needed to describe changes in debt service schedules to demonstrate present value savings;

(D) a copy of the FOS, or, if an FOS is not available, the final bond order or other official document describing the relevant financing activity, including a final debt service schedule; and

(E) a copy of the letter from the attorney general approving the transaction, if the transaction required approval by the attorney general.

(3) Receipt of the complete amended application packet is required before debt service payments on the relevant debt issuances will be qualified for IFA state aid.

(4) Upon evaluation of the complete amended application packet, the TEA may request additional supporting documentation.

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 January 23, 2008.



### 19 TAC §61.1035

The Texas Education Agency (TEA) proposes an amendment to §61.1035, concerning school facilities. The section addresses provisions relating to the Existing Debt Allotment (EDA). The proposed amendment would modify eligibility for the EDA based on changes to statutory language, in accordance with Senate Bill 962, 80th Texas Legislature, 2007, and House Bill 1922, 80th Texas Legislature, 2007. The proposed amendment would also incorporate other revisions to the EDA program, such as requiring the reporting of bond issues and related debt service payments and the disclosing of transactions that affect EDA eligible bonds, explaining the effect of interest rate management agreements, establishing requirements for refinanced bonds, and modifying the time limit for amending data used for calculations.

Through 19 TAC §61.1035, adopted to be effective December 12, 1999, the commissioner exercised rulemaking authority relating to assistance with payment of existing debt. The current provisions include the establishment of eligibility; definition of qualifying debt service; and explanations of limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt.

House Bill 1922, 80th Texas Legislature, 2007, amended TEC, §46.033 and §46.034, relating to assistance with payment of existing debt, by updating the reference to eligibility date of bonds from 2004-2005 to 2006-2007. Senate Bill 962, 80th Texas Legislature, 2007, amended TEC, §46.034, to restrict certain limitations on assistance if a district is affected by a military base realignment. The proposed amendment to 19 TAC §61.1035 includes revisions that would incorporate these statutory changes as well as other updates and revisions, as follows.

Subsection (a) would be revised in paragraph (1) to specify that payment on bonds must have been made on or before August 31, 2007, to meet eligibility criteria. Paragraph (1) would also be revised to add language requiring that final official statements or bond orders be reported to the state information depository in order for bond issues and their related debt service payments to be eligible to receive EDA state assistance. Technical corrections to terms would also be made in subsection (a).

Subsection (b) would be revised by adding new paragraphs (3) - (5). New paragraph (3) would require a district to disclose any changes in the financing of EDA-supported debt. New paragraph (4) would establish a state aid penalty for failure to disclose such changes and explain how EDA eligibility is regained after it has been lost as a result of failing to report changes. New paragraph (5) would require a district to disclose interest rate management agreement transactions and their associated credit risk ratings in the final official statement related to the bond transaction. It would also establish a state aid penalty for failure to disclose the interest rate management agreement. Additional technical corrections to terms and numbering would also be made in subsection (b).

Subsection (c) would be revised to modify the calculation of the existing debt tax rate (EDTR) for a district affected by a military base realignment.

Subsection (d) would be revised by adding new paragraph (2) to explain that requests for payments or adjustments that are submitted to TEA after December 15 will be processed with the payments due for the following fiscal year. The subsequent paragraph would be renumbered accordingly. Renumbered paragraph (3)(B) would change the date by which districts must remit amounts they were overpaid to be no later than 30 days after the date they were notified of the overpayment. Renumbered paragraph (3)(C) would require that adjustments to state assistance for any reason be requested within a three-year time limit.

Subsection (f) would be revised by modifying paragraph (1) to clarify the definition of refinanced debt. New paragraph (2) would be added to describe penalties for failure to report required information on refinancings. Subsequent paragraphs would be renumbered accordingly.

New subsection (g) would be added to require that a district notify the commissioner of EDA-related financing activities by submitting an EDA correction form packet. New subsection (g) would also define the materials that make up a complete EDA correction form packet.

Relating to procedural and reporting implications, districts will be required to disclose interest rate management agreement transactions in their final official statements, though this appears to be a common practice and will not likely result in a change in the way of doing business for most districts. The proposed amendment includes the addition of new language which requires districts that are eligible for a modified calculation of their EDTR as a result of a military base realignment to provide documentation from the U.S. Department of Defense describing the impact of the base realignment on the local school district.

Locally maintained paperwork requirements resulting from the proposed amendment to 19 TAC §61.1035 would correspond with and support the stated procedural and reporting implications.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Beaulieu has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be the expansion of the eligibility of bonds for state assistance through the EDA, resulting in lower local tax rates needed to retire school district debt. The requirements to disclose interest rate management agreements and other financing activities would provide greater transparency in school district transactions. The modification of the calculation of the EDTR for districts affected by military base realignments would help these districts absorb costs associated with the realignments. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress

Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §46.031, which authorizes the commissioner of education to adopt rules for the administration of Texas Education Code, Chapter 46, Assistance with Instructional Facilities and Payment of Existing Debt, Subchapter B, Assistance with Payment of Existing Debt; and Texas Education Code, §46.061, which authorizes the commissioner to by rule provide for the payment of state assistance under Texas Education Code, Chapter 46, to refinance school district debt.

The proposed amendment implements the Texas Education Code, §46.031 and §46.061.

§61.1035. *Assistance with Payment of Existing Debt.*

(a) Eligibility. Certain restrictions apply to debt and to school districts eligible for the existing debt allotment (EDA).

(1) Debt eligible for the EDA is an existing obligation of a school district made through the issuance of a bond for instructional or non-instructional purposes pursuant to Texas Education Code (TEC), Chapter 45, Subchapter A, or through the refunding of bonds as defined in TEC, §46.007. The district must have made a payment on the bonds on or before August 31, 2007 [2003]. Lease-purchase agreements [arrangements] authorized by Local Government Code, §271.004, are not eligible. Payments demonstrating eligibility for the EDA must appear on the debt service schedule contained in the final official statement (FOS) or bond order. The debt service schedule contained in the FOS (or in the bond order, if the bonds are privately placed) and filed with the state information depository will be used to determine eligible bond payments. To the extent that neither the FOS nor the bond order is filed with the state information depository, such documents shall be filed with the Texas Education Agency (TEA). Bond issues and their related debt service payments that are not reported to the state information depository or the TEA, as applicable, are not eligible to receive EDA state assistance.

(2) Eligible debt does not include any portion of an existing obligation that has been approved for financial assistance with the Instructional Facilities Allotment (IFA) as defined in §61.1032 of this title (relating to Instructional Facilities Allotment), in accordance with TEC, Chapter 46.

(3) Eligible bond payments include regularly scheduled principal and interest payments that are made between September 1 and August 31 each year.

(4) Certain other refinanced debt may be eligible for funding under this subsection.

(A) A lease purchase refinanced [refunded] with a general obligation bond shall be eligible for consideration for the EDA in future years based on the date of payment on the new bond and the limits on tax rates that apply.

(B) Any portion of a bond issue that refinances a portion of an original lease-purchase agreement [arrangement] that was eligible for IFA consideration but exceeded the IFA limit shall be eligible for consideration in future years pursuant to this subsection based on the date of first payment on the new bond and the limits on tax rates that apply.

(C) If a lease purchase that is not funded in the IFA program is refinanced with a general obligation bonded debt, the bonded debt shall gain eligibility for the EDA by the terms of the EDA program. Any interest and sinking [Interest and Sinking] (I&S) fund tax effort associated with the bonded debt payments may be counted for purposes of computing the EDA. Qualification pursuant to this subsection shall be according to the terms of the program, including the date of first payment on the bond and the relevant tax rate limitation.

(D) Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of funding consideration pursuant to the EDA.

(b) Qualifying debt service. Certain district revenues may qualify to meet the local share requirement of the EDA when computing state assistance amounts.

(1) I&S fund taxes collected in the current school year may qualify toward meeting the local share requirement of the EDA. In addition, other district funds budgeted for the payment of bonds may qualify to meet the EDA local share requirements.

(A) Funds budgeted by a district for payment of eligible bonds may include I&S fund taxes collected in the 1999-2000 school year or later school year in excess of the amount necessary to pay the district's local share of debt service on bonds in that year, provided that the taxes were not used to generate other state aid.

(B) Funds budgeted by a district for payment of eligible bonds may include maintenance and operations [Maintenance and Operations] (M&O) taxes collected in the current or previous school year that are in excess of amounts used to generate other state aid.

(C) The commissioner of education will provide each district with information about what tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year.

(D) The commissioner of education will determine the amount of excess collections, if any, to be applied to the EDA local share requirement.

(2) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the FOS [final statement] stipulates the requirements of the I&S fund and the bond covenant.

(3) An EDA correction form packet is required for any EDA-supported bonds that have undergone changes, including, but not limited to, refinancing, restatement, or any other transaction that materially affects the terms of the bonds, including transactions that materially affect the terms of the underlying bonds. An EDA correction form packet must be submitted to the TEA no later than 180 days following the date on which the transaction was approved by the attorney general, if the transaction required approval by the attorney general. If approval by the attorney general was not required, the EDA correction form packet is due within 180 days of the date that the school board approved the transaction.

(4) Failure to submit the EDA correction form packet to the TEA division responsible for state funding within the 180-day period defined in paragraph (3) of this subsection will result in the suspension of EDA state aid payments for the applicable EDA allotment award. This suspension has the following effects.

(A) Debt service payments associated with the applicable EDA allotment will be disqualified for EDA state aid upon expiration of the 180-day period defined in paragraph (3) of this subsection. Debt service payments made after the 180-day period expires will not earn EDA state aid.

(B) Eligibility for EDA state aid associated with the applicable allotment will resume on the date the EDA correction form packet, including any required supporting documentation, is received. The EDA state aid will be based on eligible debt service payments scheduled on or after the date the EDA correction form packet is received.

(C) Current and future EDA state aid payments may be adjusted to reflect the disqualified debt service payments. If no EDA state aid is due in a fiscal year that is affected by such an adjustment, a district will be notified about the disqualified amount and will be required to remit that amount to the TEA no later than 30 days after notification.

(D) Unless otherwise requested, payments of EDA state aid based on the updated eligible debt service reported in the completed EDA correction form packet shall be made with the payments due for the following fiscal year in accordance with TEC, §46.035.

(5) If a district enters into an interest rate management agreement related to debt that is supported by EDA funds, the district shall provide a schedule or schedules demonstrating the anticipated effect of the interest rate management agreement on the debt service for the related bonds. If a district enters into an interest rate management agreement, the amount of debt service eligible for EDA funding shall be determined as follows.

(A) If an interest rate management agreement is executed concurrently with a public offering or private placement of bonds related thereto, the debt service eligible for EDA funding will be equal to the amount of debt service reflected in the debt service schedule contained in the FOS, in the private placement memorandum, or (if no FOS or private placement memorandum is prepared) in supplemental schedule(s) filed with the TEA.

(B) If an interest rate management agreement is not executed concurrently with a public offering or private placement of bonds related thereto, the debt service eligible for EDA funding will be equal to the amount of debt service reflected in schedules to be provided by the district to the TEA as required by paragraph (3) of this subsection.

(C) Failure to identify the interest rate management agreement transaction to the commissioner within 180 days of its execution, by submitting an EDA correction form packet, may disqualify the debt service on the related bonds from the EDA state assistance as described in paragraph (4) of this subsection. Such debt service will remain ineligible unless the information described in this paragraph is provided to the TEA division responsible for state funding. The commissioner may require that EDA funding paid to a district for such ineligible debt service be refunded by the district.

(D) For purposes of this section, "interest rate management agreement" means an agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, debt derivative transaction, or hedge transaction; for a transaction similar to those types of transactions; or for a combination of any of those types of transactions, as described in the Texas Government Code, §1231.001.

(6) [(3)] I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year, second to satisfy the local share requirements of any IFA debts for that school year, and third [lastly] to

excess taxes that may raise the limit for the EDA program in a subsequent biennium if collected in the second year of a state fiscal biennium.

(7) [(4)] Computation of state aid in the EDA program for a variable rate bond shall be based on the minimum payment requirement. A district may receive such state aid for payment on a variable rate bond in excess of the minimum payment requirement as long as the additional amount meets certain conditions.

(A) The payment is necessary to meet the computed interest costs for the year.

(B) The amount shall not exceed the applicable limit for debt established pursuant to TEC, §46.034(b).

(C) The district shall notify the commissioner of education of its intent prior to the adoption of the district's tax rate for debt service for the applicable year.

(8) [(5)] A district may exercise its ability to make payments in excess of the minimum payment required but the excess amount shall not be used in determining the limit on the existing debt tax rate (EDTR) or in the calculation of state assistance in that year.

(9) [(6)] Computation for fixed-rate bonds shall be based on published debt service schedules as contained in the FOS or in schedules filed with the TEA for a private placement or other transaction in which no FOS is prepared [official statement]. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.

(c) Limits on assistance. The amount of state assistance is limited by the lesser of a calculated EDTR for eligible debt or an appropriated debt tax limit.

(1) The calculated EDTR is a rate determined with the debt limit resulting from the lesser of calculations specified in subparagraphs (A) or (B) of this paragraph, except as specified in paragraph (2) of this subsection.

(A) EDTR may be calculated as the I&S fund taxes collected for eligible bonds for the last fiscal year of the preceding state fiscal biennium divided by the property value used for state funding purposes in that year, then multiplied by 100.

(B) EDTR may be calculated as the current year debt service payment on eligible bonds divided by the product of the current year average daily attendance (ADA) multiplied by \$35, and then divided by \$100.

(2) If the district demonstrates, in a manner prescribed by the commissioner, that the district must construct, acquire, renovate, or improve one or more instructional facilities to serve the children of military personnel transferred to a military installation in or near the district under the Defense Base Closure and Realignment Act of 1990 (10 USC §2687), the EDTR may be calculated using the method specified in paragraph (1)(B) of this subsection.

(3) [(2)] The EDTR used in the funding formula cannot exceed the appropriated limit (\$ .29).

(4) [(3)] For purposes of computing EDTR, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.

(d) Data and payment cycles. The necessary data elements to calculate state assistance for existing debt and the associated payment cycle are determined by the commissioner of education.



(1) An initial, preliminary payment of state assistance will be made as soon as practicable after September 1 of each year. This payment will be based on an estimate of ADA; the taxable value of property certified by the ~~comptroller of public accounts~~ [Comptroller of Public Accounts] for the preceding school year as determined in accordance with Government Code, Chapter 403, Subchapter M; and the amount of taxes budgeted to be collected for payment of eligible bonds. Districts will supply information about budgeted taxes in July on a data collection survey.

(2) Requests for payments and or adjustments submitted to the TEA after December 15 shall be processed with the payments due for the following fiscal year in accordance with TEC, §46.035.

(3) [(2)] A final determination of assistance for a school year will be made at the close of business for the current school year when final counts of ADA and collection amounts for eligible debt are available. This determination will also take into account, if applicable, a reduced property value that reflects either a rapid decline pursuant to TEC, §42.2521, or a grade level adjustment pursuant to TEC, §42.106.

(A) Any additional amounts owed will be paid as soon as practicable after the final determination is made.

(B) Any overpayment will be subtracted from the EDA in the subsequent year. If no such assistance is due in the subsequent school year, the Foundation School Fund will be reduced accordingly. If no payments are due from the Foundation School Fund, the district will be notified about the overpayment and must remit that amount to the TEA [Texas Education Agency (TEA)] no later than 30 days [~~three weeks~~] after notification.

(C) Adjustments to state assistance based on changes in the final counts of ADA, ~~or~~ changes to a district's property value, changes to IFA eligible debt, or any other reason must be requested no later than three years following the close of the school year for which the adjustment is sought.

(e) Deposit and uses of funds.

(1) Funds received from the state for assistance with existing debt must be deposited in the district's I&S fund and must be taken into account before setting the I&S fund tax rate.

(2) State and local shares of the EDA must be used for the exclusive purpose of making principal and interest payments on eligible debt.

(f) Refinancing of eligible debt.

(1) A district that refinances eligible debt in part or in full must inform the TEA [TEA's] division responsible for state funding in writing and must provide appropriate documentation related to the refinancing, including payment schedules for the refinanced [~~refunded~~] debt that clearly identify the bonds being refinanced [~~refunded~~] and the debt service attributable to the refinanced [~~refunded~~] bonds, if available. Refinancing of eligible debt includes: [State aid payments for EDA will not be processed until these documents have been received by the TEA division responsible for state funding.]

(A) the refunding of eligible debt through the issuance of refunding bonds; and

(B) the conversion of the period, mode, or index used to determine the interest rate for eligible debt in accordance with the order authorizing the issuance or delivery of such eligible debt.

(2) In order to retain eligibility for EDA funding, a district shall submit an EDA correction form packet in accordance with subsection (b)(3) of this section to the TEA division responsible for state

funding no later than 180 days after the date the refunding bonds were approved for sale by the office of the attorney general (or, in the case of a conversion, such information shall be submitted within 180 days after the date of the conversion). Failure to submit the information required by this paragraph within 180 days after the date the refunding bonds were approved for sale by the attorney general (or, in the case of a conversion, within 180 days after the date of the conversion) will disqualify otherwise eligible bonds for EDA funding as described in subsection (b)(4) of this section. Such bonds will remain ineligible until such information is provided to the TEA division responsible for state funding. The commissioner may require that EDA funding paid to a district for such ineligible debt service be refunded by the district.

(3) [(2)] The portion of the debt eligible for state assistance on refinanced [~~refunded~~] bonds is subject to the same limits as eligible debt that has not been refinanced.

(4) [(3)] If a refinancing transaction [~~refunding pricing of a district~~] decreases the current year bond payment requirement, the reduced payment amount shall be the basis of determining the limit on funding.

(5) [(4)] If a refinancing transaction [~~refunding pricing of a district~~] increases the bond payment requirement, the amount of increase shall not be used to determine state aid unless the pricing took place prior to January 1 of the last fiscal year of the preceding state fiscal biennium. The total debt service eligible for state assistance will be limited to the district's total debt service prior to January 1 of the last fiscal year of the preceding state fiscal biennium.

(g) Reports required. The commissioner shall require such information and reports as are necessary to assure compliance with applicable laws.

(1) The commissioner shall require immediate notification by a district of relevant financing activities as described in subsections (b)(3) and (b)(5) of this section. Failure by a district to make such notification will result in the disqualification of debt service from EDA state aid as described in subsections (b)(4) and (b)(5)(C) of this section. A district is also required to report changes in use of bond proceeds, or other actions taken by the district that might affect state funding requirements by submitting a complete EDA correction form packet, or possibly face disqualification of debt service from EDA state aid, as described in subsections (b)(4) and (b)(5)(C) of this section.

(2) A complete EDA correction form packet includes:

(A) a completed EDA correction form;

(B) the appropriate schedules needed to identify the original EDA allotment award or the most recently approved revised allotment award and changes to the title of the debt issuance, the authorization to issue the debt, and other relevant terms;

(C) the appropriate schedules needed to describe changes in debt service schedules;

(D) a copy of the FOS, or, if an FOS is not available, the final bond order or other official document describing the relevant financing activity, including a final debt service requirement schedule, the sources and uses schedule, and the schedule of refinanced bonds;

(E) a copy of the letter from the attorney general approving the transaction, if the transaction required approval by the attorney general; and

(F) copies of the payment vouchers for the payments made on the debt associated with the allotment, if requested by the TEA.

(3) Receipt of the complete EDA correction form packet is required before debt service payments on the relevant debt issuances will be qualified for EDA state aid.

(4) Upon evaluation of the complete EDA correction form packet, the TEA may request additional supporting documentation.

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 January 23, 2008.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 9, 2008

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



## CHAPTER 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER C. OTHER PROVISIONS

#### 19 TAC §74.35

The State Board of Education (SBOE) proposes new §74.35, concerning additional requirements for high school health classes. The proposed new section would require school districts and open-enrollment charter schools to incorporate instruction in parenting awareness into any course meeting a requirement for a health education credit, using the materials approved by the SBOE.

House Bill 2176, 80th Texas Legislature, 2007, added Texas Education Code, §28.002(p), which requires the SBOE, in conjunction with the Office of the Attorney General, to develop a parenting and paternity awareness program that school districts will be required to use in the high school health curriculum. This program must address parenting skills and responsibilities, including child support and other legal rights and relationship skills, including money management, communication skills, and marriage preparation. In high schools that do not have a family violence prevention program, skills relating to the prevention of family violence must be included.

The proposed new 19 TAC §74.35, Additional Requirements for High School Health Classes, would outline school district and open-enrollment charter school requirements for implementation of this program. The proposed new rule would establish that SBOE-approved materials must be used, specify that local school health advisory councils must assist in ensuring that local community values are reflected in the district's health instruction, stipulate that school districts may add elements but must include specific areas of instruction, address instances where health education credit courses are taken prior to Grade 9, and establish that the requirements begin with the 2008-2009 school year.

It is anticipated that the SBOE-approved materials for the parenting and paternity awareness program will be provided to school districts at no charge.

Sharon Jackson, deputy associate commissioner for standards and alignment, has determined that, for the first five-year period

the proposed new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Dr. Jackson has determined that, for each year of the first five years the proposed new section, is in effect the public benefit anticipated as a result of enforcing the new section would include additional resources to be used in teaching students about parenting. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §28.002(p), as added by House Bill 2176, 80th Texas Legislature, 2007, which authorizes the SBOE, in conjunction with the Office of the Attorney General, to develop a parenting and paternity awareness program that a school district shall use in the district's high school health curriculum.

The proposed new section implements the Texas Education Code, §28.002(p).

#### §74.35. Additional Requirements for High School Health Classes.

(a) A school district and an open-enrollment charter school shall incorporate instruction in parenting awareness into any course meeting a requirement for a health education credit, using the materials approved by the State Board of Education for this purpose in accordance with Texas Education Code (TEC), §28.002(p). Implementation of this requirement shall comply with requirements that the board of trustees of each school district establish a local school health advisory council to assist the district in ensuring that local community values are reflected in the district's health education instruction as stated in TEC, §28.004.

(b) A school district may add elements at its discretion but must include the following areas of instruction:

(1) parenting skills and responsibilities, including child support;

(2) relationship skills, including money management, communication, and marriage preparation; and

(3) skills relating to the prevention of family violence, only if the school district's high schools do not have a family violence prevention program.

(c) If the required high school health education credit is earned through a course taken prior to Grade 9, the materials and parenting awareness instruction must be incorporated into that course or, at the district's discretion, may be incorporated into another course available to all students in Grades 9-12.

(d) A school district shall use the materials approved by the State Board of Education for this purpose beginning with the 2008-2009 school year.

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 January 28, 2008.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## CHAPTER 101. ASSESSMENT

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF LIMITED ENGLISH PROFICIENT STUDENTS IN STATE ASSESSMENTS

#### 19 TAC §101.1007, §101.1009

The Texas Education Agency (TEA) proposes amendments to §101.1007 and §101.1009, concerning participation of limited English proficient students in state assessments. Section 101.1007 addresses limited English proficient students at grades other than the exit level. Section 101.1009 addresses limited English proficient students who receive special education services. The proposed amendments reflect clarifications on serving students who receive both special language and special education services to correspond with recent changes adopted in 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students. The proposed amendments would also update references to state assessments to reflect recent changes in the state assessment program.

Amendments to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students, adopted to be effective September 17, 2007, included clarification on serving students who receive both special language and special education services. The adopted amendments clarify that the admission, review, and dismissal (ARD) committee and language proficiency assessment committee (LPAC) shall work in conjunction in the testing and classification of students who are designated as limited English proficient (LEP) and receive special education services.

The proposed amendments to 19 TAC Chapter 101, Assessment, Subchapter AA, Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments, would reflect the changes made in 19 TAC Chapter 89, Subchapter BB. In addition, the proposed amendments would update references to state assessments to reflect recent changes in the state assessment program.

The proposed amendment to 19 TAC §101.1007, Limited English Proficient Students at Grades Other Than the Exit Level, would include a technical update in subsection (b)(1) to reference English language proficiency assessments in reading.

The proposed amendment to 19 TAC §101.1009, Limited English Proficient Students Who Receive Special Education Services, would revise language in subsections (b) and (c) to clarify that the ARD committee and LPAC shall work in conjunction to make decisions regarding the selection of state assessments and testing accommodations for a LEP student served by special education to ensure that factors related to both the student's second language acquisition needs and disabling condition are considered. Guidance documents for meeting the requirement that the ARD committee and LPAC work in conjunction are under development by the TEA Department of Standards and Programs. The proposed amendment would also update reference to the state assessments in subsection (d) to reflect recent changes in the state assessment program.

Relating to procedural and reporting implications, the proposed clarifications may increase the frequency with which the LPAC and ARD committee collaborate on state assessment participation decisions for LEP students served through special education.

The proposed clarifications may increase the paperwork required and maintained by the LPAC and/or ARD committee in order to consider testing decisions for LEP students served through special education.

Criss Cloudt, associate commissioner for assessment, accountability, and data quality, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Dr. Cloudt has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be the extension of the clarifications provided in 19 TAC Chapter 89, Subchapter BB, to the state assessment decision-making processes followed by ARD committees and LPACs for the benefit of LEP students served through special education. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §39.023, which authorizes the commissioner of education to adopt rules concerning the exemption of limited English proficient students from the administration of assessment instruments.

The amendments implement the Texas Education Code, §39.023.

*§101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.*

(a) In Grades 3-6, the language proficiency assessment committee (LPAC) shall determine whether a limited English proficient (LEP) student is administered the assessment of academic skills in Eng-

lish or in Spanish. A LEP student may be administered a Spanish version of the assessment of academic skills for a maximum of three years. If the LEP student is an immigrant, the number of LEP exemptions and administrations of the assessment in Spanish must not exceed three.

(b) In accordance with paragraphs (1) - (4) of this subsection, certain immigrant LEP students who have had inadequate schooling outside the U.S. may be eligible for an exemption from the assessment of academic skills during a period not to exceed their first three school years of enrollment in U.S. schools. The term "immigrant" in this subchapter is defined as a student who has resided outside the 50 U.S. states for at least two consecutive years.

(1) In Grades 2-12, an ~~An~~ immigrant LEP student who achieves a rating of advanced high on the state-administered ~~reading proficiency tests in~~ English language proficiency assessment in reading during the student's first school year of enrollment in U.S. schools is not eligible for an exemption in the second or third school year of enrollment in U.S. schools. An immigrant LEP student who achieves a rating of advanced or advanced high on this assessment during the student's second school year of enrollment in U.S. schools is not eligible for an exemption in the third school year of enrollment in U.S. schools.

(2) During the first school year of enrollment in U.S. schools, the immigrant student may be granted a LEP exemption if the LPAC determines that the student has not had the schooling outside the U.S. necessary to provide the foundation of learning that Texas schools require and measure on the assessment, whether the foundation be in knowledge of the English language or specific academic skills and concepts in the subjects assessed.

(3) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the U.S. was inadequate and for whom a primary language assessment is not available may be granted a LEP exemption if the LPAC determines that the student lacks the academic language proficiency in English necessary for an assessment of academic skills in English to measure the student's academic progress in a valid, reliable manner.

(4) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the U.S. was inadequate and for whom a Spanish-version assessment is available is not eligible for a LEP exemption and must take the assessment in either English or Spanish unless:

(A) the student is in an English as a second language (ESL) program, which does not call for instruction in Spanish, and the LPAC determines that the student lacks the language proficiency in English and the academic instruction in Spanish and/or literacy in Spanish for the assessment in either English or Spanish to measure the student's academic progress in a valid, reliable manner; or

(B) the student is in a bilingual education program and the LPAC has documentation, including signed verification by the parent or guardian whenever possible, that there was an extensive period of time outside the U.S. in which the student did not attend school and that this absence of schooling resulted in such limited academic achievement and/or literacy that assessment in either English or Spanish is inappropriate as a measure for school accountability. The term "extensive period of time outside the U.S.," as used in this subparagraph, shall be defined in the test administration materials.

(c) Students exempted under subsection (b) of this section shall be administered assessments in subjects and grades required by federal law and regulations as delineated in the test administration materials. Exempt students assessed only for federal accountability purposes shall not be subject to the grade advancement requirements under the Student Success Initiative.

(d) A LEP student whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption under subsection (b) of this section. The student shall take the assessments of academic skills in English and the English language proficiency assessments required by §101.1001 of this title (relating to English Language Proficiency Assessments).

(e) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a two-way bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress. However, the student may not be administered the Spanish-version assessment for longer than three years.

*§101.1009. Limited English Proficient Students Who Receive Special Education Services.*

(a) The provisions of this subchapter apply to limited English proficient (LEP) students who receive special education services except as otherwise specified in this section.

(b) The admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) shall make decisions ~~Decisions~~ regarding the selection of assessments and appropriate accommodations for LEP students who receive special education services ~~shall be made by the admission, review, and dismissal (ARD) committee, which includes a language proficiency assessment committee (LPAC) member to ensure that issues related to the student's language proficiency are duly considered]~~.

(c) A LEP student who receives special education services may be exempted from the English language proficiency assessments required by §101.1001 of this title (relating to English Language Proficiency Assessments) only if the ARD committee and LPAC determine ~~determines~~ that these assessments cannot provide a meaningful measure of the student's annual growth in English language proficiency for reasons associated with the student's disability.

(d) The provisions of §101.1007(b) and (c) of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level) apply to the state's general and alternate assessments ~~assessment~~ of academic skills ~~and the state-developed alternative assessment of academic skills]~~.

(e) A LEP student who receives special education services and whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption on the basis of limited English proficiency.

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 January 25, 2008.

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Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

Earliest possible date of adoption: March 9, 2008

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

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CHAPTER 105. FOUNDATION SCHOOL PROGRAM

## SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE AID ENTITLEMENTS

### 19 TAC §105.1014

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Education Agency (TEA) proposes the repeal of §105.1014, concerning state aid entitlements. The section addresses state reimbursement for electric utility restructuring. The proposed repeal is necessary due to the repeal of the section's authorizing statute, Texas Utilities Code, §39.901, and expiration of the rule.

Texas Utilities Code, §39.901, required the TEA to provide supplemental state aid to school districts experiencing a decline in taxable property values because of electric utility restructuring. The commissioner exercised rulemaking authority to adopt 19 TAC §105.1014, State Reimbursement for Electric Utility Restructuring, effective December 2, 2001.

Senate Bill 1652, 79th Texas Legislature, Regular Session, 2005, repealed Texas Utilities Code, §39.901, and, therefore, removed the statutory authority for the rule. In addition, 19 TAC §105.1014(c) specifies an expiration date of August 31, 2007, for the section.

The proposed repeal of 19 TAC §105.1014 would implement the statutory change and remove an expired rule.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that, for the first five-year period 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 repeal.

Ms. Beaulieu has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal would be adherence to statutory changes and elimination of an expired rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The repeal is proposed under Senate Bill 1652, 79th Texas Legislature, Regular Session, 2005, which repealed the section's authorizing statute, Texas Utilities Code, §39.901.

The proposed repeal implements Senate 1652, 79th Texas Legislature, Regular Session, 2005.

§105.1014. *State Reimbursement for Electric Utility Restructuring.*

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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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

### 19 TAC §129.22

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The State Board of Education (SBOE) proposes the repeal of §129.22, concerning court-related students. The section establishes provisions relating to absences for specific students. The proposed repeal is necessary to reflect statutory changes resulting from House Bill (HB) 2455, 80th Texas Legislature, 2007.

HB 2455, 80th Texas Legislature, 2007, amended the TEC, §25.087, authorizing excused absences for required court appearances. The amended statute allows such an absence to be counted as a day of compulsory attendance and counted in average daily attendance.

Section 129.22, Court-Related Students, addresses excused absences for students referred to a juvenile court for delinquent conduct or conduct indicating a need for supervision and students referred to the Texas Department of Human Services or a county or local welfare unit for abuse or neglect. This section can be repealed because TEC, §25.087, as amended by HB 2455, 80th Texas Legislature, 2007, provides the statutory authority for excused absences for court-related appearances by students.

The proposed repeal of 19 TAC §129.22 would eliminate the potential for conflict with statute regarding court appearances by students.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that, for the first five-year period 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 repeal.

Ms. Beaulieu has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal would be the elimination of duplicate provisions for excused absences for required court appearances. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The repeal is proposed under HB 2455, 80th Texas Legislature, 2007, which amended the TEC, §25.087, to address student absences for required court appearances. Therefore, the repeal of 19 TAC §129.22 is necessary to eliminate the potential for conflict with statute.

The repeal implements HB 2455, 80th Texas Legislature, 2007, and Texas Education Code, §25.087.

#### §129.22. *Court-Related Students.*

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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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2007-2008 Student Attendance Accounting Handbook*.

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

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance

audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each June/July. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2007-2008 school year. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Significant changes to the *2007-2008 Student Attendance Accounting Handbook* include the addition of information relating to the following sections.

In section 3, on general attendance requirements, information relating to the following has been added: (1) students ages 21 to 25 are eligible for state funding if they are attempting to complete requirements for a high school diploma; (2) absences for court appearances are excused absences; (3) absences for students playing taps at a veteran's funeral are excused absences; and (4) the board of trustees of a school district may adopt a policy requiring a student who voluntarily enrolls or attends school after his or her 18th birthday to attend until the end of the school year.

In section 5, on career and technical education, information relating to the following has been added: school districts must offer three or more programs of study in at least three different clusters to be eligible for career and technology funding.

In section 6, on bilingual/English as a second language (ESL) education, information relating to the following has been added: (1) limited English proficient students will be provided instruction in mathematics, science, health, and social studies both in their home language and in English; (2) students may be served in an approved program under an exception to the Spanish bilingual program for six consecutive years and under an exception to the ESL program for one year; (3) students may be served in an approved bilingual program in a language other than Spanish for as long the State Board for Educator Certification does not have a certificate for that language; (4) bilingual education or ESL program eligible days present may not be claimed when students in these programs are placed in disciplinary settings for more than five consecutive days if the same type of bilingual or ESL program services are not provided; and (5) students may earn state credit for English for Speakers of Other Languages (ESOL).

In section 7, on prekindergarten, information relating to the following has been added: children who are or ever have been in foster care are eligible for prekindergarten attendance.

In section 9, on pregnancy related services (PRS), information relating to the following has been added: (1) students receiving PRS and returning to campus on a temporary, limited basis to take the Texas Assessment of Knowledge and Skills (TAKS) test can be credited with receiving a maximum of one hour of PRS compensatory education home instruction (CEHI) for each day they are on campus and involved in TAKS testing; (2) students receiving PRS and provided the TAKS test in the home can be credited with receiving a maximum of one hour of PRS CEHI for each day they test at home; (3) students receiving PRS and receiving TAKS tutoring, taking practice tests, etc., cannot be

credited for CEHI; and (4) students receiving PRS must have a doctor's approval to be involved in TAKS testing on campus.

In section 10, on nontraditional schools, information relating to the following has been added: (1) students who are 21 years of age or older and are admitted for the purpose of completing the requirements of a high school diploma are not eligible for placement in a disciplinary alternative education program (DAEP) or juvenile justice alternative education program (JJAEP), but will have their admission revoked for conduct that would require or authorize placement in a DAEP or JJAEP for a student under the age of 21; (2) the commissioner of education can waive certain requirements established by state law or the State Board of Education if it directly benefits the students' education, except as provided in the provisions of TEC, §7.056(e) and (f), regarding criminal misconduct or restrictions imposed by state or federal law; (3) an alternative campus for at-risk students must serve pre- and post-adjudicated students, homeless students, or students who previously resided or currently reside in a residential placement facility in the district; (4) school districts must adopt consistent procedures for determining serious or persistent misbehavior violating the student code of conduct for students in an alternative education program; (5) each school district that is in a county with a population greater than 125,000 and the county's juvenile board shall annually enter into a joint memorandum of understanding (MOU); and (6) academically, the mission of a JJAEP shall be to enable students to perform at grade level.

In addition to changes related to these requirements and allowances, a new section on nontraditional programs has been included in the handbook to provide student attendance guidelines for the High School Equivalency Program (HSEP) and the Optional Flexible School Day Program (OFSDP).

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Beaulieu has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment would be the public notice of the existence of the current publications specifying attendance accounting procedures for school districts and charter schools. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The public comment period on the proposal begins February 8, 2008, and ends March 9, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with Texas Education Code, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The proposed amendment implements the Texas Education Code, §42.004.

§129.1025. *Adoption By Reference: Student Attendance Accounting Handbook.*

(a) The standard procedures that school districts and charter schools shall use to maintain records and make reports on student attendance and student participation in special programs for school year 2007-2008 [2006-2007] are described in the official Texas Education Agency (TEA) publication [2007-2008 [2006-2007] *Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the 2007-2008 [2006-2007] *Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education shall amend the 2007-2008 [2006-2007] *Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.

(b) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER F. EXPERIENCE REQUIREMENTS

##### 22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122, concerning Acceptable Work Experience.

The amendment to §511.122, will insert the following text "or higher" after text "level" and insert text "add skills" after the text "knowledge" in subsection (b); in subsection (c)(5) replace the following text "as approved by the board will" with the following text "on a full time basis may"; add subsection (c)(8) with the following text "Self employment, unless approved by the board, may not be used to satisfy the work experience requirement."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies what constitutes acceptable work experience.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 27, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.122. *Acceptable Work Experience.*

(a) (No change.)

(b) Non-routine accounting involves the use of independent judgment, applying entry level or higher professional accounting knowledge and skills to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) All work experience, to be acceptable, shall be gained in the following categories or in any combination of these.

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

(5) Education. Work experience gained as an instructor at a college or university will qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full time basis may [as approved by the board will] be considered. All experience shall be supervised by the department chair or faculty member who is a CPA.

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

(8) Self employment, unless approved by the board, may not be used to satisfy the work experience requirement.

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 January 28, 2008.

TRD-200800366

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER H. CERTIFICATION

### 22 TAC §511.163

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.163. The current section is titled "Examination on the Rules of Professional Conduct." The new section title will be "Board Approved Ethics Requirement and Examination on the Rules of Professional Conduct."

The amendment to §511.163 will delete the original subsection (a); add new subsection (a) the new text will be "Candidates applying for the issuance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education."; add new subsection (b) with the new text "Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education."; renumber the original subsection (b) with subsection (c); renumber the original subsection (c) with paragraph (1) and add the text "on the Rules of Professional Conduct"; renumber subsection (d) with paragraph (2); the text of subsection (d)(1) will be included in new subsection (c)(2); delete subsection (d)(2).



William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies where a test candidate can find the rules that form the basis of the test on the rules of professional conduct and allows the candidate to take a second re-exam rather than waiting six months.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 27, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.163. *Board Approved Ethics Requirement and Examination on the Rules of Professional Conduct.*

(a) Candidates applying for the issuance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct

of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education.

~~[(a) Candidates applying for the issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board-approved and registered provider of continuing professional education.]~~

(b) Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education.

~~(c) [(b)] Candidates applying for the issuance of the CPA certificate must also pass an examination on the rules of professional conduct promulgated by the board.~~

(1) [(e)] The examination on the Rules of Professional Conduct must be completed not more than six months prior to the issuance of the CPA certificate.

(2) [(d)] A grade of 85% must be scored on the exam in order to be considered passing.

~~[(+)] If a grade of 85% is not scored on the exam, the candidate will be sent another exam.~~

~~[(2) Failure to score at least 85% on the re-exam test would prevent the candidate from taking the exam for six months. Failure to again score less than 85% would continue the cycle.]~~

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



**22 TAC §§511.164 - 511.167, 511.171, 511.173, 511.174, 511.176**

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §§511.164 - 511.167, 511.171, 511.173, 511.174 and 511.176, concerning Names on Certificates, Certificate, Replacement Certificates, Relinquishing a Certificate or Registration, Voluntary Surrender of Certificate, Filing Complaints, Action Relating to Complaints, and Certification Hearings.

The proposed repeal of §§511.164 - 511.167, 511.171, 511.173, 511.174 and 511.176 will be removed because it is no longer relevant. A new chapter will be added including these rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a rule that is no longer relevant to this section.

The probable economic cost to persons required to comply with the repeal will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on February 27, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§511.164. *Names on Certificates.*

§511.165. *Certificate.*

§511.166. *Replacement Certificates.*

§511.167. *Relinquishing a Certificate or Registration.*

§511.171. *Voluntary Surrender of Certificate.*

§511.173. *Filing Complaints.*

§511.174. *Action Relating to Complaints.*

§511.176. *Certification Hearings.*

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800461

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 9, 2008

For further information, please call: (512) 305-7848



## CHAPTER 514. CERTIFICATION AS A CPA

### 22 TAC §§514.1 - 514.7

The Texas State Board of Public Accountancy (Board) proposes new Chapter 514, concerning Certification as a CPA.

The new Chapter 514 will provide new §514.1, concerning Names on Certificates, §514.2, concerning Certificate, §514.3, concerning Replacement Certificates, §514.4, concerning Filing Complaints, §514.5, concerning Action Relating to Complaints, §514.6, concerning Voluntary Surrender of Certificate, and §514.7, concerning Certification Hearings.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be none.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be adding a new section to distinguish between certificate holders and applicants applying for the certification.

The probable economic cost to persons required to comply with the new rules will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rules will not affect a local economy.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because this does not concern small businesses.

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on February 27, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rules will have an adverse economic effect on small business; if the new rules are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rules are to be adopted; and if the new rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rules under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed new rules.

#### §514.1. Names on Certificates.

(a) The certificate of a certified public accountant shall be issued under the legal name of the candidate as it appears on the birth certificate, current passport or alien registration card or as changed by court order, marriage license, or divorce decree.

(b) The license of a certified public accountant may be issued in the name of the licensee as it appears on the birth certificate or other appropriate legal document in accordance with §511.22 of this title (relating to Fee for a Replacement Certificate) or as changed by court order, marriage license, or divorce decree.

(c) At the candidate's option, words or abbreviations such as "Jr." or "III" do not have to appear on the certificate, license, or the board's records even though such words or abbreviations are part of the candidate's legal name.

#### §514.2. Certificate.

All certificates shall be issued in the name of the board and may bear the signature of all board members and the seal of the Texas State Board of Public Accountancy.

#### §514.3. Replacement Certificates.

(a) Replacement certificates may be issued by the board in appropriate cases and upon payment by the certified public accountant or public accountant of the fee as determined by the board in §521.11 of this title (relating to Fee for the Replacement of a Certificate). A registration or certificate holder is specifically prohibited from possessing more than one Texas certificate as a certified public accountant or registration as a public accountant.

(b) When a replacement certificate is requested, the registration or certificate holder must return the original or registration certificate or submit a sworn affidavit describing the occurrence that necessitated the replacement certificate or registration.

#### §514.4. Filing Complaints.

The board may, on its own motion, or on the complaint of any person, initiate proceedings to determine the eligibility of any candidate for the issuance of a certificate. Chapter 519 of this title (relating to Practice and Procedure) provides for the notice and hearing. Sufficient cause for this action includes, but is not limited to, any of the following instances:

(1) fraud or deceit by a candidate on the certification application;

(2) final conviction of a felony or of any crime, involving dishonesty, fraud, moral turpitude, alcohol abuse or controlled substances, under the laws of any state or of the United States, or the imposition of deferred adjudication in connection with the criminal prosecution of such an offense; or

(3) conduct indicating a lack of fitness to serve the public as a professional accountant.

#### §514.5. Action Relating to Complaints.

(a) The board, having conducted a hearing under this title, may reach the following conclusions:

(1) deny the candidate the opportunity for issuance of a certificate;

(2) prohibit the candidate from certification for a period not to exceed five years;

(3) issue the candidate a certificate with conditions and requirements established by the board; or

(4) close the case without adverse action against the candidate.

(b) The board shall refund the fee submitted by the candidate for certification if the candidate is denied the issuance of a certificate.

(c) The candidate may petition the board in writing for a reversal of the board's findings. After notice and hearing the board may:

(1) approve an application for certification that was previously denied;

(2) uphold its prior findings;

(3) overturn its prior findings; or

(4) modify its prior findings.

#### §514.6. Voluntary Surrender of Certificate.

(a) A certificate holder who is not under investigation by the board may voluntarily surrender his certificate by delivering the certificate to the board along with a written statement of intent to voluntarily surrender the certificate. Once a certificate holder has surrendered his certificate, he is no longer eligible to hold a license under §901.402 of the Act and licensing exemptions will no longer apply.

(b) A former certificate holder who has voluntarily surrendered his certificate under subsection (a) of this section may apply for a new certificate upon completion of the examination requirement for a new certificate. The board may waive the examination requirement for a former certificate holder upon submission of the following to the board:

(1) evidence of completion of all CPE that would have been required to be completed up to a maximum of 120 hours over the three years immediately preceding application;

(2) a sworn affidavit in the form provided by the board stating that the former certificate holder has not been convicted of, placed on community supervision or accepted deferred adjudication for any felony crime or for any misdemeanor crime involving fraud, dishonesty or moral turpitude under the laws of any state or the United States and that the former certificate holder did not surrender the certificate to avoid disciplinary action by the board or to avoid administrative revocation under board rules adopted pursuant to §§901.159, 901.411 or 901.502 of the Act; and

(3) payment of all license fees that would have been paid if the former certificate holder's license had been active since the date of surrender and all applicable late fees.

(c) A new certificate issued to a former certificate holder will bear the same certificate number as the original certificate.

(d) If an individual, subject to the approval of the Board, voluntarily surrenders and resigns the certificate or registration during the course of a disciplinary investigation or proceeding conducted by the board, this fact shall be disclosed in any later application for a new certificate, and shall be considered before the issuance of a new certificate.

§514.7. Certification Hearings.

Unless otherwise determined by the board, the following are reasons why a person not be certified as a CPA.

(1) The individual has been convicted of a felony offense, which results in incarceration, probation, parole, mandatory supervision or deferred adjudication.

(2) The individual has been convicted of a felony or misdemeanor offense, or granted a deferred adjudication which directly relates to the practice of public accountancy.

(3) A person applying for the issuance of a certificate who can be identified in paragraphs (1) or (2) of this section has the right to a hearing before the board, to present evidence relative to the conviction. As a part of the hearing, the board's consideration shall include, the following issues before reaching a decision:

(A) the nature and seriousness of the crime as it applies to the board's statutory responsibility to ensure that a person, maintains high standards of competence and integrity.

(B) the extent to which the person might have an opportunity to repeat criminal activity of the same type as that in which the individual was previously involved;

(C) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a certified public accountant, and

(D) the additional factors provided in §53.023 of the Texas Occupations Code.

(4) Because a licensee is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the reports and other services of licensees, the board considers that the following crimes directly relate to the practice of public accountancy:

(A) a felony offense or misdemeanor offense of which dishonesty or fraud is an element;

(B) a felony offense or misdemeanor offense which results in the suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action; and

(C) crimes involving moral turpitude, alcohol abuse or controlled substances.

(5) The following procedures shall apply in the processing of the application for certification.

(A) The candidate shall respond, under penalty of perjury, to the question, "Have you ever been convicted of a felony or a misdemeanor, placed on probation, or granted deferred adjudication in any state or by the federal government?"

(B) The board shall obtain criminal history record information as stipulated in this chapter on any candidate about whom the executive director finds evidence to warrant a record search.

(C) The board shall review the application, statements made by the candidate relating to criminal activity, criminal history

record information, and shall approve or disapprove the application as the evidence warrants. All applications disapproved under these conditions shall be scheduled for a hearing upon written request of the applicant.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800460

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 9, 2008

For further information, please call: (512) 305-7848

◆ ◆ ◆  
CHAPTER 519. PRACTICE AND PROCEDURE  
SUBCHAPTER D. PROCEDURES AFTER  
HEARING

**22 TAC §519.72**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.72, concerning Final Decisions and Orders.

The amendment to §519.72 will replace subsection (c)(1) - (8) with new subsection (c): The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines: new (c)(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge with a written statement of applicable rules or policies, or prior administrative decisions; new (c)(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or and new (c)(3) that a technical error in a finding of fact should be changed.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will comport state law.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because this will not affect small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 27, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.72. *Final Decisions and Orders.*

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

(c) The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge with a written statement of applicable rules or policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

~~It is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ when the proposed order is:~~

~~{(1) erroneous;}~~

~~{(2) against the weight of the evidence;}~~

~~{(3) based on unsound accounting principles or auditing standards;}~~

~~{(4) based on insufficient review of the evidence;}~~

~~{(5) not sufficient to protect the public interest;}~~

~~{(6) not sufficient to adequately allow rehabilitation of the licensee;}~~

~~{(7) an infringement on the board's discretion to determine the board's policies; or}~~

~~{(8) to correct a technical error.}~~

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

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

Filed with the Office of the Secretary of State on January 28, 2008.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

#### 22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors after January 1, 2005.

The amendment to §523.132 will delete "after January 1, 2005" from the description of the rule; add the text "The" to the beginning of subsection (a); delete the following text "Effective January 1, 2005, the" and the following text "after January 1, 2005". In subsection (a)(1) after the text "Texas" insert the following text "or that the instructor is team teaching with a certified public accountant licensed in Texas". Delete the following text "within the last three years or". In subsection (b)(1) delete the following text "or by June 30, 2005, whichever is later,". In subsection (b)(5) delete the text "Public Accountancy". Delete subsection (d) and replace with the following text "An instructor must submit a current resume with the contract."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the requirements for ethics course instructors.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 27, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. *Board Contracted Ethics Instructors [after January 1, 2005].*

(a) The [Effective January 1, 2005, the] board may contract with any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content [after January 1, 2005]) who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas or that the instructor is team teaching with a certified public accountant licensed in Texas and has completed the board's ethics training program [within the last three years or] as required by the board;

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

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon proof that he has:

(1) at the time of application [or by June 30, 2005, whichever is later,] obtained education in ethics substantially equivalent to a minimum of 6 hours of credit from an accredited University, College or Community College, of which at least three hours must be in organizational ethics;

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

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the [Public Accountancy] Act.

(c) (No change.)

(d) An instructor must submit a current resume with the contract.

[(d) Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pur-

suant to the provisions of the Public Accountancy Act an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.]

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 January 28, 2008.

TRD-200800364

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 9, 2008

For further information, please call: (512) 305-7848



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 151. GENERAL PROVISIONS

##### 37 TAC §151.6

The Texas Board of Criminal Justice proposes amendments to §151.6, Petition for the Adoption of a Rule. The amendments are necessary to conform to state law and add clarity.

Charles Marsh, 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. Marsh has also determined that, for 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 provide the public with an opportunity to participate in rulemaking.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §492.016, §2001.021 and Chapter 2008.

Cross Reference to Statutes: Texas Government Code, §492.013.

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

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ or Board) to encourage public input in the Board's rulemaking process.

(b) ~~[(a)]~~ Submission of the petition.

(1) Any person may petition a state agency ~~[State Agency]~~ to adopt a rule as defined by the *Texas Administrative Procedure Act*, Chapter 2001 of the Texas Government Code.

(2) A petition for a rule under Title 37 of the Texas Administrative Code shall be mailed ~~or delivered~~ to the General Counsel of Texas Department of Criminal Justice (TDCJ or the Agency) at P.O. Box 13084, Austin, Texas 78711.

(3) The petition shall be in writing, shall contain the petitioner's name and address ~~[-]~~ and shall describe the rule and the reason for making such petition. If the General Counsel determines that further information is necessary to assist the Agency in reaching a decision, the General Counsel may require that the petitioner resubmit the petition and that it contain:

(A) A ~~[a]~~ brief explanation of the proposed rule;

(B) ~~The [the]~~ text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) A ~~[a]~~ statement of the statutory or other authority under which the rule is to be promulgated;

(D) ~~Whether [whether]~~ there will be an economic impact on persons required to comply with the proposed rule;

(E) An economic impact statement which estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses and describes alternative methods of achieving the purpose of the proposed rule; [whether the proposed rule will have an effect on small or micro businesses; and]

(F) A regulatory flexibility analysis as defined in Texas Government Code, §2006.002; and

(G) ~~[(F)]~~ ~~The [the]~~ public benefit anticipated as a result of adopting the rule or the anticipated injury ~~or [of]~~ inequity that could result from the failure to adopt the proposed rule.

(4) In addition to the petition, the person may submit a proposal for the adoption of the proposed rule through negotiated rule-making. The proposal shall identify the potential participants for the negotiated rulemaking committee, possible third party facilitators and a timeline for the process.

(c) ~~[(b)]~~ Consideration and Disposition~~[disposition]~~ of the Petition~~[petition-]~~

(1) Except as provided in subsection (d) ~~[(e)]~~ of this rule, ~~[section,]~~ the Chairman, in consultation with the General Counsel, ~~[Agency]~~ shall consider and dispose of all petitions submitted.

(2) Within 60 days after receipt of the petition by the General Counsel, or within 60 days after receipt by the General Counsel of a resubmitted petition in accordance with subsection (a)(3) of this rule, ~~[section,]~~ the Chairman, in consultation with the General Counsel, ~~[Agency]~~ shall deny the petition or institute rulemaking procedures in accordance with established Agency procedures and the *Texas Administrative Procedure Act*. The Chairman, in consultation with the General Counsel, ~~[Agency]~~ may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) The Board may initiate a negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008, upon the filing of a petition to initiate the rulemaking proceeding under subsection (b) of this rule.

(4) ~~[(3)]~~ If the Chairman, in consultation with the General Counsel, ~~[Agency]~~ denies the petition, the General Counsel shall give the petitioner written notice of the Agency's denial and the reasons for the denial.

(d) ~~[(e)]~~ Subsequent Petitions to Adopt the Same or Similar Rule. ~~[petitions to adopt the same or similar rule.]~~ The General Counsel may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six (6) months after the date of the initial petition.

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 January 23, 2008.

TRD-200800321

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: March 9, 2008

For further information, please call: (512) 463-0422



## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.13

The Texas Board of Criminal Justice proposes amendments to §159.13, Educational Services to Released Offenders/Memorandum of Understanding. The proposed amendments are necessary to add clarity and expand the locations where the memorandum of understanding are filed.

Charles Marsh, 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. Marsh has also determined that, for 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 offer releasees educational opportunities that will assist them in the successful reintegration into the community and help them to succeed.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §508.318.

Cross Reference to Statutes: Texas Government Code, §492.013.

§159.13. *Educational Services to Released Offenders/Memorandum of Understanding.*

(a) The Texas Department of Criminal Justice (TDCJ) adopts ~~[by reference]~~ a memorandum of understanding with the Texas Education Agency (TEA) concerning ~~[-]~~ 19 TAC §89.1311 ~~(relating to~~

Memorandum of Understanding to Provide Educational Services to Released Offenders), establishes] the respective responsibilities of the TDCJ [board] and the TEA [agency] in implementing a continuing educational program to increase the literacy of releasees.  
Figure: 37 TAC §159.13(a)

(b) The memorandum of understanding is required by the Texas Government Code, §508.318, as added by the 75th Texas Legislature, 1997, Chapter 165, §12.01.

(c) Copies of the memorandum of understanding are filed with [in] the [Office of] Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701 and with the TDCJ Parole Division, 8610 Shoal Creek Blvd., Austin, Texas 78758 and may be reviewed during regular business hours.

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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Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
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For further information, please call: (512) 463-0422



## CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

### 37 TAC §163.5

The Texas Board of Criminal Justice proposes amendments to §163.5, Waiver to Standards. The proposed amendments are necessary to add clarity.

Charles Marsh, 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. Marsh has also determined that, for 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 ensure a fair process for issuing waivers to Community Supervision and Corrections Departments.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §492.013.

§163.5. *Waiver to Standards.*

A Community Supervision and Corrections Department (CSCD) or other state-aid recipient may request a waiver to a standard or standards from the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) director. The TDCJ-CJAD director may grant a waiver upon receipt, examination and approval of the waiver request. [The TDCJ-CJAD director may grant a waiver to a CSCD, or other state-aid recipient, from a standard or standards upon receipt, examination and approval of a request for waiver by TDCJ-CJAD.] The request for waiver shall [must] include a plan to comply with the [said] standard or standards by a certain date [;] and an explanation [as to] why the CSCD is not currently in compliance with the [said] standard or standards. When a determination has been made that the CSCD is not in compliance with a standard, the CSCD director shall immediately submit a written request for a waiver of the standard to the TDCJ-CJAD director. [When out of compliance with any standard, the request for waiver of standards must immediately be submitted by the CSCD director to the TDCJ-CJAD director.] If the waiver is approved by the TDCJ-CJAD director, the waiver shall become [becomes] part of the audit record for compliance with that standard.

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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Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
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For further information, please call: (512) 463-0422



### 37 TAC §163.33

The Texas Board of Criminal Justice proposes amendments to §163.33, Community Supervision Officers. The amendments are necessary to conform to state law and add clarity.

Charles Marsh, 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. Marsh has also determined that, for 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 certified and well-trained community supervision officers.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.008 and §509.009.

Cross Reference to Statutes: Texas Government Code, §492.013 and §509.003.



§163.33. *Community Supervision Officers.*

(a) Eligibility. In accordance with Texas Government Code §76.005, to be eligible for employment as a Community Supervision Officer [Officers] (CSO) who supervises offenders, a person:

(1) Shall [must] have a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) Unless [unless] the bachelor's degree is in criminal justice, criminology, corrections, counseling, human services development, law, law enforcement, police science, pre-law, public administration, rehabilitative studies, social work, psychology, or sociology, the person shall [must] have:

(A) A minimum of one (1) year of graduate study in one (1) of the [these] fields listed in (a)(2) of this rule; or

(B) A minimum of one (1) year of experience in full-time casework, counseling[,] or community or group work; or

(C) Other [other] education or experience, documented by letter in the employee's personnel file indicating the employee was [which indicates that they were] the most qualified applicant at the time of hiring. Such letter shall be signed by the Community Supervision and Corrections Department (CSCD) director. [~~CSCD Director.~~]

(3) Cannot [cannot] be employed as a peace officer or work as a reserve or volunteer peace officer; and

(4) Cannot [cannot be] currently be on community supervision, [or] parole or serving a sentence for a criminal offense.

(b) Training.

(1) The CSCD directors [and] assistant directors, Community Corrections Facility (CCF) [~~CCF~~] directors [and] assistant [~~CCF~~] directors, CSO supervisory staff, [and] CSOs and residential CSOs with less than four (4) years of experience shall complete [obtain] not less than 80 documented hours of professional, skill-based training each biennium.

(A) At least 40 of the hours shall be professional, skill-based training with topics related to the case management work of a CSO.

(B) Up to 40 hours in excess of the 80 required hours may be carried over to the next biennium. [Forty hours are to be approved by the CSCD director and 40 hours to be approved by the TDCJ-CJAD director, or her/his designee. Up to 40 hours, in excess of the 80 hours, may be carried over from one biennium to the next. A certified CSO who fails to obtain the required 80 hours of training within a biennium will be ineligible to serve as a CSO. A CSO, exempt from certification, who fails to obtain the required 80 hours of training within a biennium, will be ineligible to serve as a CSO until the required hours are obtained.]

(C) A certified CSO who fails to complete the required 80 hours of training within a biennium shall be ineligible to continue serving as a CSO until the required hours are completed. A CSO who is exempt from certification as defined in subsection (c)(4) of this rule and fails to complete the required 80 hours of training within a biennium, shall be ineligible to continue serving as a CSO until the required hours are completed.

(2) CSCD directors and assistant directors, CCF directors and assistant directors, CSO supervisory staff, CSOs and residential CSOs with four (4) or more years of experience at the close of business on August 31 of any biennium, shall complete at least 40 documented hours of professional, skill-based training each biennium.

(A) Up to two (2) of the four (4) years of required experience may have been earned through work in juvenile probation or parole, adult parole or similar work in other states. At least two (2) of the required four (4) years shall have been earned as a full-time, wage-earning officer in Texas community supervision. The required four (4) years need not be continuous.

(B) Up to 20 hours in excess of the 40 required hours may be carried over to the next biennium.

(C) A certified CSO who fails to complete the required 40 hours of training within a biennium shall be ineligible to serve as a CSO until the required hours are completed. A CSO who is exempt as defined in subsection (c)(4) of this rule from certification and fails to complete the required 40 hours of training within a biennium, shall be ineligible to serve as a CSO until the required hours are completed.

(3) Training that meets the following criteria shall be considered professional, skill-based training:

(A) The training program specifies behavioral learning objectives for the participants, as a result of the training program, and the participants learn a skill or gain specific knowledge in actual day-to-day community supervision work.

(B) Case management topics may include, but not be limited to, knowledge that reinforces and/or updates a current skill, or are related to evidence based practices, motivational interviewing, progressive sanctions or specific knowledge to enhance the participants' performance. Professional, skill-based sessions are distinguished from information dissemination sessions.

(4) The CSCD director or [his/her] designee shall ensure that training records for all staff identified in subsections (b)(1) and (2) of this rule are maintained and available for Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD) [TDCJ-CJAD] auditors. Those records shall reflect the following for each staff member:

(A) [~~(1)~~] The [the] number of training hours accrued and the dates of the training;

(B) [~~(2)~~] The specific training programs [the type of training] attended with supporting documentation;

(C) [~~(3)~~] The [specification of the] number of accrued hours and the number of hours [that are] approved by the CSCD director as professional, skill-based training; and

[~~(4)~~] the number of accrued hours that are approved by the TDCJ-CJAD director; and]

(D) [~~(5)~~] The [the] number of training hours carried over from one (1) biennium to another.

(c) New CSO Certification. A newly hired [Any] CSO shall [who is first employed by a CSCD director or judicial district in this state after September 1, 1987, is required to] complete the certification course work and achieve [obtain] a passing grade on the certification examination within one (1) year of the beginning date of employment as a CSO.

(1) A new, uncertified CSO who fails [An officer failing] to achieve certification within one (1) year of the CSO's [their] employment date may not continue to be employed as a CSO beyond the specific date by which the CSO is [they are] to have achieved certification [and] unless the TDCJ-CJAD has granted an extension for the completion of course work and the examination as allowed by law. [A CSO who was employed by any CSCD in this state on or at any time before September 1, 1987, is exempt from the requirements of the certification program.]

(2) ~~[(4)] [Certification Examination.]~~ A new, uncertified CSO ~~[, employed on or after September 2, 1987],~~ who completes the certification course work but fails to achieve a passing grade on the certification examination ~~[,]~~ shall ~~[will]~~ be allowed to take the examination a second ~~[one more]~~ time. A CSO who fails ~~[An officer failing]~~ the examination a second time, shall ~~[will be required to]~~ complete the certification course work again before being allowed to take the examination for the ~~[a]~~ third and final time.

(3) CSOs are ~~[will be]~~ eligible to pursue ~~[the]~~ certification ~~[requirements]~~ two (2) years after the last testing date and are ineligible to supervise direct cases until certification is achieved.

(4) A CSO who was employed by any CSCD in Texas on or before September 1, 1989 is exempt from the requirements of the certification program.

~~(d) [(e)] Exempt CSO [Officers] Certification.~~ Certification course work and the certification examination shall ~~[will]~~ be available to those CSOs who were appointed prior to September 2, 1989. ~~[1987.]~~ An exempt CSO ~~[officer]~~ who wishes to be certified shall ~~[will]~~ be given one (1) opportunity to pass the certification examination in order to be certified. If the exempt CSO fails the examination, the CSO shall ~~[officer must]~~ complete the certification course work before attempting to pass the examination again.

~~(e) [(f)] Residential CSO [Officer] Certification.~~ A residential CSO, who was employed or appointed as such on or after September 2, 1989, shall satisfactorily complete the residential certification course work and examination ~~[for residential certification]~~ offered by the TDCJ-CJAD not later than the first anniversary of the date on which the CSO began ~~[officer begins]~~ employment with the CSCD ~~[department's]~~ residential facility. Provisions of subsections (b) through (g) ~~[(e) - (h)]~~ of this rule ~~[section]~~ shall also apply to any residential CSO.

~~(f) [(g)] Recertification upon Re-employment.~~ ~~[Once an officer is certified, if the CSO fails to maintain certification, recertification will be immediately required by successful completion of the certification examination. An officer who fails the examination must complete the certification course work for recertification.]~~

(1) A ~~[If a]~~ CSO who is subject to the certification provisions of ~~[CJAD Standard]~~ subsection (c) of this rule ~~[section,]~~ and who leaves the employment of a Texas CSCD for more than one (1) year after having ~~[has]~~ been employed as a CSO for one (1) year or longer is required~~;~~ leaves the employment of a Texas CSCD for more than one year the CSO is required] to become recertified. Such recertification shall ~~[must]~~ be accomplished within one (1) year of re-appointment through the CSO ~~[by,]~~ taking and achieving a passing grade on ~~[successfully passing,]~~ the CSO examination. ~~[Certification exam.]~~ If the CSO ~~[An officer who]~~ fails the examination, the CSO shall ~~[exam must]~~ complete the CSO certification course work and achieve a passing grade on the examination ~~[pass the exam]~~ to be recertified.

(2) A CSO who is subject to the certification provisions of ~~[CJAD Standard]~~ subsection (c) of this rule ~~[section,]~~ and who leaves the employment of a Texas CSCD for more than one (1) year after having ~~[has]~~ been employed as a CSO for less than one (1) year shall be recertified. ~~[and leaves the employment of a Texas CSCD for more than one year, is required to become recertified.]~~ Such recertification shall be accomplished within one (1) year of re-appointment through the CSO's completion of ~~[by completing,]~~ the CSO certification course work and achieving a passing grade on the examination. ~~[successfully passing the exam.]~~

(g) ~~[(h)]~~ Certification Status. A CSO ~~[An officer]~~ who fails to maintain ~~[his/her]~~ CSO certification or residential certification by not completing the required ~~[obtaining 80]~~ hours of training in accordance

with subsection (b) of this rule ~~[section,]~~ is immediately ineligible to supervise direct cases until recertification is achieved. Recertification shall be immediately required by achieving a passing grade on the certification examination. An officer who fails the examination shall complete the certification course work for recertification.

~~(h) [(i)] Dual Certifications.~~ A residential CSO shall ~~[Residential CSOs are required to]~~ be certified as a CSO and ~~[to further]~~ obtain additional certification in residential service. A residential CSO shall ~~[They must]~~ complete both certification courses in ~~[as noted by]~~ the time frames specified in subsections (c) through ~~[and]~~ (f) of this rule. ~~[section.]~~ However, a residential CSO needs ~~[they]~~ only ~~[need]~~ to complete 80 hours (or 40 hours for experienced CSOs and residential CSOs) of professional, skill-based training related to community supervision and residential programs per biennium as specified in subsection (b) of this rule ~~[section]~~ to maintain both certifications.

~~(i) [(j)] Residential Personnel Training.~~ ~~[All CSCD direct care staff of a residential facility shall be provided at least 40 hours of documented professional skill based training per biennium. At least 20 training hours per biennium shall be applicable to the needs of the population served by the facility. All of the hours shall be approved by the CSCD Director. At least 20 of the hours per biennium must be approved by the TDCJ-CJAD director or his/her designee. The CSCD director shall have written policy regarding training records for each employee that are maintained to reflect the following: the number of training hours accrued, the type of training attended with supporting documentation, specification of the number of accrued hours that are approved by the CSCD Director, the number of accrued hours that are approved by the TDCJ-CJAD director, and the number of training hours carried over from one biennium to another. A maximum of 20 hours earned per biennium, which are in excess of the 40 required hours that biennium, may be carried over to the next biennium. All direct care staff of a residential facility shall receive training in the reintegration model training programs offered by the TDCJ-CJAD within the first anniversary of their hire date.]~~

(1) Initial Training Requirements. Within one (1) year from the date of employment with the facility, all direct care staff shall receive initial training in ~~[the following areas:]~~ ethics; discrimination/sexual harassment ~~[issues];~~ first aid procedures; cardiopulmonary resuscitation (CPR) procedures; and HIV/AIDS education. Direct care staff shall continue to receive the ~~[necessary]~~ training ~~[as]~~ dictated by the guidelines of the granting authority that provided the initial training in first aid and CPR procedures.

(2) All residential direct care staff, including vendor staff, of a residential facility, with less than four (4) years of experience at the close of business on August 31 of any biennium, shall be required to complete a minimum of 40 hours of documented professional, skill-based training per biennium.

(A) A minimum of 20 training hours per biennium shall be specific to the needs of the offender population served by the facility.

(B) Up to 20 hours in excess of the 40 required hours may be carried over to the next biennium. All direct care staff of a residential facility shall receive case management training offered by the TDCJ-CJAD before the first anniversary of their hire date.

(3) Direct care residential staff with four (4) or more years experience at the close of business on August 31 of any biennium, shall be required to complete at least 20 documented hours of professional, skill-based training each biennium.

(A) A maximum of two (2) years of prior employment as a correctional officer or direct care staff in a juvenile facility, jail, parole facility, state jail facility, prison, contract (private vendor) res-

idential facility or similar work in a facility in another state may be counted toward the four (4) year experience requirement. At least two (2) of the required four (4) years shall have been as a full-time, wage earning direct care staff in a CCF funded by the TDCJ-CJAD in Texas. The required four (4) years need not be continuous.

(B) The reduced number of hours of required professional, skill-based training for the direct care residential staff who have at least four (4) years of experience shall not affect or reduce the training requirements regarding CPR, first aid or defensive driving. A maximum of ten (10) hours earned in excess of the 20 required hours, may be carried over to the next biennium. Any member of the direct care residential staff who fail to complete the required 20 hours of training within a biennium shall be ineligible to serve as direct care residential staff until the required hours are completed.

(4) [(2)] Defensive Driving. All direct care staff [;] whose primary duties include transporting offenders [;] shall attend a defensive driving course by the first anniversary of their hire date. [within one year from date of employment.] Direct care staff shall take defensive driving courses as needed to maintain certification.

(5) The CSCD director shall have a written policy that requires the maintenance of training records for each employee and vendor staff that reflect:

(A) The number of training hours accrued and the dates of the training;

(B) The specific programs attended with supporting documentation;

(C) The number of accrued hours and the number of hours approved by the CSCD director as professional, skill-based training; and

(D) The number of training hours carried over from one (1) biennium to another.

(j) [(k)] Supervision Officers of Substance Abuse Felony Punishment Facility (SAFPF) [SAFPF ] Program Participants. CSOs [Supervision officers] who supervise participants in the SAFPF [substance abuse felony punishment facility (SAFPF)] program shall be required to attend and complete the TDCJ-CJAD approved training designed specifically for officers who supervise SAFPF program participants during the course of treatment in a SAFPF and in the continuum of care component of the SAFPF program. The required training shall be completed within 12 months of being assigned supervision of SAFPF program participants, unless the TDCJ-CJAD has granted an extension for completion of the course work. CSOs [Supervision officers ] who supervise SAFPF program participants as of the adoption date of this requirement and who have not attended the required training, shall [must] complete the training within 12 months of the adoption date.

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

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Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



### 37 TAC §163.38

The Texas Board of Criminal Justice proposes amendments to §163.38, concerning Sex Offender Supervision. The proposed amendments are necessary to add clarity and conform to state law.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the amendments 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. Marsh has also determined that, for 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 enhance public safety through the effective supervision of sex offenders.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §76.016 and §509.003 and Texas Code of Criminal Procedure, art. 42.12 and Chapter 62.

Cross Reference to Statutes: Texas Government Code, §492.013.

§163.38. *Sex Offender Supervision.*

(a) Definitions.

(1) Jurisdictional Authority--A [~~"Jurisdictional authority"~~ means a] sentencing court, the Board of Pardons and Paroles (BPP)[;] or a division of the Texas Department of Criminal Justice (TDCJ) as applicable to the offender.

(2) Sex Crime--A [~~"Sex offense" means a]~~ reportable offense under Art. 62.001(5), Texas [62.01(5);] Code of Criminal Procedure (TCCP).

(3) Sex Offender--An [~~"Sex offender" means an]~~ offender who:

(A) Is convicted of committing or adjudicated to have committed a sex crime under state or federal law; [has a current conviction or deferred adjudication for a sex offense;]

(B) Is awarded deferred adjudication for a sex crime under state or federal law; [has a prior conviction or deferred adjudication for a sex offense and has been ordered by the jurisdictional authority to participate in sex offender supervision or treatment; or]

(C) Is convicted of, adjudicated to have committed or awarded deferred adjudication for an offense that is based on sexually motivated conduct; or

(D) [(C)] Has [has] been ordered by the jurisdictional authority to participate in sex offender supervision or treatment.

(b) Community Supervision and Corrections Departments (CSCDs) [CSCDs] supervising sex offenders shall ensure consistency in the manner in which sex offenders are supervised throughout the department. Policies and procedures shall be developed that, at a minimum, include the following:

(1) Contact standards as per 37 Texas Administrative Code (TAC) [TDCJ-CJAD Standard] §163.35(c)(7);

(2) Sex offender registration as per TCCP, Chapter 62:

(3) DNA collection as per TCCP, art. 42.12, Sec. 11(a)(22);

(4) Violation procedures as per 37 TAC [TDCJ-CJAD Standards] §163.35(c)(9);

(5) Victim services as per Texas Government Code 2 [Annotated] §76.016;

(6) Treatment referral process as per TCCP, art. 42.12, Sec. 13B(c);

(7) Treatment participation requirements;

(8) Team approach to supervision;

(9) Sharing of information/documentation with the appropriate agencies; [agency;] and

(10) Specialized caseload size, if applicable.

(c) CSCDs shall develop policies and procedures that address the needs and safety of victims or potential victims. The policies may include collaborating with victims, victim advocates<sup>[-]</sup> or sexual assault task forces in the supervision and treatment of sex offenders.

(d) Community Supervision Officers (CSOs) [CSOs] shall use a record keeping system to document all significant actions, decisions, services rendered and periodic evaluations in the offender's case file, including the offender's status regarding level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(e) CSOs shall collaborate with collateral sources. Collateral sources may include treatment providers, polygraph examiners, significant others, sex offender registration personnel, sex offenders' families, local law enforcement, schools, Children's Protective Services (CPS), employers, chaperones<sup>[-]</sup> and victim service providers.

(f) CSOs shall recommend that conditions be tailored to the sex offender's identified risk.

(g) CSOs shall make face-to-face, field visits<sup>[-]</sup> and collateral contacts with the offender, family, community resources<sup>[-]</sup> or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at higher levels of supervision shall receive a higher level of contacts than offenders at lower levels of supervision. Supervision contacts shall be specified in the CSCDs written policies and procedures.

(h) CSCD directors shall work in conjunction with the local judiciary to specify written policies and procedures wherein CSOs may make recommendations to the courts regarding violations of conditions of community supervision, as well as when violations may be handled administratively. The availability of the continuum of sanctions or alternatives [alternative] to incarceration shall be considered by the CSO [community supervision officer] and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(i) CSOs shall timely transmit information regarding supervision and treatment at the time supervision is transferred.

(j) In addition to the above, CSCDs may operate specialized caseloads for sex offenders. In this event, CSCDs shall have a written policy that:

(1) Establishes minimum qualifications for CSOs supervising sex offenders;

(2) Determines the minimum training requirements for CSOs supervising sex offenders; and

(3) Specifies the number of staff required for the increased level of supervision essential for the specialized supervision of sex offenders. The recommended CSO to offender ratio is one (1) to 45.

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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Melinda Hoyle Bozarth

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### 37 TAC §163.41

The Texas Board of Criminal Justice proposes amendments to §163.41, concerning Medical and Psychological Information. The proposed amendments are necessary to conform the rule to state law and to add clarity.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the amendments 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. Marsh has also determined that, for 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 ensure that Community Supervision and Correction Department (CSCD) directors develop and implement policies relevant to Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) in accordance with the guidelines established by the Texas Department of State Health Services and to ensure that all records and information concerning an offender's physical or mental state, including all information pertaining to an offender's HIV-AIDS status, are confidential in accordance with state and federal law.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.003 and Texas Health and Safety Code §85.142.

Cross Reference to Statutes: Texas Government Code, §492.013 and Texas Health and Safety Code, §§85.001, 85.141, 85.143 and Chapter 614.

§163.41. *Medical and Psychological Information.*

(a) Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Policies. Community Supervision

and Corrections Department [CSCD] directors shall develop and implement policies relevant to HIV in accordance with guidelines established by the Texas Department of State Health Services and adopted by the Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD). [TDCJ-CJAD:] These policies shall [will] be incorporated in the CSCD's administrative manuals and shall include, at a minimum, but not be limited to, the following:

- (1) Education/Training; [education/training;]
- (2) Confidentiality; [~~confidentiality~~;
- (3) Workplace [~~workplace~~] guidelines; and
- (4) Supervision [~~supervision~~] of individuals with HIV or AIDS infection.

(b) Employee Training. In accordance with state law, [statute;] each employee of the CSCD shall attend an HIV-AIDS training program[.] within the first year of employment and each year thereafter. Education programs for employees shall include information and training relating to infection control procedures.

(c) HIV Confidentiality. Information regarding HIV-AIDS testing and results is confidential and[- ~~HIV-AIDS information~~] shall be maintained in a safe and secure manner. Access [with access] to this confidential information shall be restricted to only those persons who have been authorized to receive this information by law or with a duly executed release and waiver of confidentiality. The CSCD may disclose HIV-AIDS information relating to special offenders in accordance with Texas Health and Safety Code, Chapter 614 and [the] other state and federal law. [statutes and authorities set forth in TDCJ-CJAD's Community Supervision and Corrections Department Records manual (October 10, 2000), as amended from time to time.]

(d) Medical and Psychological Information. All records and other information concerning an offender's physical or mental state, including all information pertaining to an offender's HIV-AIDS status, are confidential in [n] accordance with the statutes and other state and federal law. [authorities set forth in the above-referenced TDCJ-CJAD's Community Supervision and Corrections Department Records manual.] Medical and psychological information shall be maintained in a safe and secure manner. Access [with access to ] this confidential information shall be restricted to only those persons who have been authorized to receive this information by law or with a duly executed release and waiver of confidentiality from the offender. The CSCD may disclose medical and psychological information relating to special needs offenders in accordance with Texas Health and Safety Code, Chapter 614 and [the] other state and federal law. [statutes and authorities identified in the aforementioned TDCJ-CJAD manual.]

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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37 TAC §163.43

The Texas Board of Criminal Justice proposes amendments to §163.43, concerning Funding and Financial Management. The proposed amendments are necessary to conform the rule to state law and to add clarity.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the amendments will be in effect, enforcing or administering the amended rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five-year period, there will not be an economic impact on persons required to comply with the amended 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 amended rule, will be to ensure to sound fiscal management and accountability of Community Supervision and Corrections Departments.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.003 and §509.004.

Cross Reference to Statutes: Texas Government Code, §§76.004, 76.008, 76.009, 76.010, 492.013 and Chapter 551, and Texas Local Government Code §140.003 and §140.004.

§163.43. *Funding and Financial Management.*

(a) Funding

(1) Qualifying for Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ-CJAD) [TDCJ-CJAD] Formula and Grant Funding Community Supervision and Corrections Departments (CSCDs) [CSCDs] qualify for TDCJ-CJAD state aid by:

(A) Being [being] in substantial compliance with TDCJ-CJAD standards;

(B) Having [having] a community justice council that serves the jurisdiction as required by law;

(C) Having [having] a TDCJ-CJAD approved community justice plan with related budgets;

(D) Having [the district judge(s) appointing] a director, appointed as described in Texas Government Code §76.004, to administer all CSCD funds;

(E) Having [having] a fiscal officer appointed by the district judge(s) manage [managing] the CSCD as set forth in subsection (b) of this rule; [section;] and

(F) Complying [except for CSCDs that can legally be managed by no more than one judge, the district judges complying] with the *Open Meetings Act*, Chapter 551, Texas Government Code, when meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004.

(2) Other Entities Qualifying for TDCJ-CJAD Grant Funding. In addition to CSCDs, counties, municipalities[.] and nonprofit organizations qualify for TDCJ-CJAD grant funding by:

(A) Being [being] in substantial compliance with TDCJ-CJAD grant conditions;

(B) Having [~~having~~] budgets related to the program proposal; and

(C) Designating [~~the grant funding recipient designat- ing~~] a chief fiscal officer to account for, protect, disburse[;] and report on all TDCJ-CJAD grant funding, and prescribing to [~~prescribe~~] the accounting procedures related thereto.

(3) Allocating State Aid. State aid shall [~~will~~] be made available to eligible funding recipients in accordance with the applicable statutory requirements and items set forth in the *Financial Management Manual for TDCJ-CJAD Funding* issued by TDCJ-CJAD.

(4) Awarding TDCJ-CJAD Grant Funding. CSCDs, counties, municipalities[;] and nonprofit organizations who are eligible to receive grant funding shall [~~must~~] meet requirements as set forth in the *Financial Management Manual for TDCJ-CJAD Funding* and be approved by the TDCJ-CJAD director [~~Director~~] to receive such funds. Grant funding shall [~~will~~] be made available in accordance with statutory requirements and items as set forth in the *Financial Management Manual for TDCJ-CJAD Funding*.

(b) Financial Procedures.

(1) Requested Information from CSCDs and Other Potentially Eligible TDCJ-CJAD Funding Recipients. Each funding recipient shall present data, documents[;] and information requested by the TDCJ-CJAD as necessary to determine the amount of state financial aid to be allocated to the recipient. [~~which the funding recipient is entitled.~~] A funding recipient receiving TDCJ-CJAD funding shall submit such reports, records[;] and other documentation as required by the TDCJ-CJAD.

(2) Deposit of TDCJ-CJAD Funding. In accordance with Texas Local Government Code §140.003, each CSCD, county[;] or municipality shall deposit all TDCJ-CJAD funding received in a special fund of the county treasury or municipal treasury, as appropriate, to be used on behalf of the department and as the CSCD directs. Nonprofit organizations shall deposit all TDCJ-CJAD funding received in a separate fund, to be used solely for the provision of services, programs[;] and facilities approved by TDCJ-CJAD.

(3) Fee Deposit. Community supervision fees and payments by offenders shall be deposited into the same special fund of the county treasury receiving state financial aid, to be used for community supervision and correction services.

(4) Restrictions on CSCD Generated Revenue. CSCD generated revenue shall be used[;] in accordance with statutory requirements and [~~with the~~] items set forth in the *Financial Management Manual for TDCJ-CJAD Funding* [(October 1, 1999), as amended from time to time].

(5) Available Records. The funding recipient and/or the fiscal officer accounting for, disbursing[;] and reporting on the TDCJ-CJAD funding shall make financial, transaction, contract, computer and other records available to TDCJ-CJAD. Funding recipients shall provide financial reports and other records to TDCJ-CJAD as set forth in the referenced *Financial Management Manual for TDCJ-CJAD Funding*.

(6) Budgets. Funding recipients shall prepare and operate from a budget(s) developed and approved within the guidelines set forth in the referenced *Financial Management Manual for TDCJ-CJAD Funding* [; as amended from time to time].

(7) Funding Recipient Obligations. Funding recipients shall comply with all funding provisions as set forth in the *Financial Management Manual for TDCJ-CJAD Funding* and any special conditions associated with the [~~their~~] respective funding awards.

(8) Honesty Bond. CSCD directors shall ensure that all public monies are protected by requiring that all employees with access to monies are covered by honesty bonds and all funds maintained on CSCD premises are protected by appropriate insurance or bonding.

(9) Travel Reimbursements. Mileage and per diem shall not be less than the state rates and no higher than the county rates if the county rates are higher than the state rates.

(c) Determination and Recovery of Unexpended Monies. Determination and return by the CSCD of unexpended funds shall be in accordance with the *Financial Management Manual for TDCJ-CJAD Funding*.

(d) Facilities, Utilities[;] and Equipment.

(1) CSCDs. In accordance with Texas Government Code §76.008, the county or counties served by a CSCD shall provide, at a minimum, the following facilities, equipment and utilities for the department.

(A) Minimum Facilities for CSCDs. Each community supervision officer (CSO) [~~CSO~~] shall be provided a private office. Each office shall have the necessary lighting, air conditioning, equipment, privacy[;] and environment to provide and promote the delivery of professional community corrections services.

(B) Minimum Utilities for CSCDs. Each CSCD office shall be provided adequate utilities necessary to provide efficient and professional community corrections services.

(C) Minimum Equipment for CSCDs. Each CSO shall be furnished adequate furniture, telephone[;] and other equipment as necessary and consistent with efficient office operations. Adequate insurance, maintenance[;] and repair of the CSCD's equipment shall be maintained.

(D) Location. Each CSCD office providing direct court services shall be located in the courthouse or as near to the courthouse as practically possible to promote prompt and efficient services to the court.

(E) Satellite Offices. Satellite CSCD offices shall be established in the area of the judicial district to provide efficient supervision of and service to offenders as dictated by population, caseload size[;] or geographical distance.

(2) Inventory. Inventory and disposal of equipment, furniture[;] and/or vehicles purchased with program funds shall [~~will~~] follow the guidelines in the *Financial Management Manual for TDCJ-CJAD Funding* [(October 1, 1999) as amended from time to time]. In addition:

(A) All equipment, furniture[;] and vehicles purchased with program funds shall [~~are to~~] be inventoried with TDCJ-CJAD in accordance with procedures set forth in the referenced *Financial Management Manual for TDCJ-CJAD Funding*.

(B) Any CSCD or other entity wanting to dispose of equipment, furniture, and/or vehicles purchased with program funds shall adhere to procedures set forth in the referenced *Financial Management Manual for TDCJ-CJAD Funding*.

(c) Certification of Facilities, Utilities[;] and Equipment for CSCDs. Certification of facilities, utilities[;] and equipment for CSCDs shall be in accordance with Texas Government Code §76.009 and §76.010, and as provided [~~for~~] in the referenced *Financial Management Manual for TDCJ-CJAD Funding* [; as amended from time to time].

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 January 23, 2008.

TRD-200800327

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Earliest possible date of adoption: March 9, 2008  
For further information, please call: (512) 463-0422



# WITHDRAWN RULES

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

## TITLE 22. EXAMINING BOARDS

### PART 11. TEXAS BOARD OF NURSING

#### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

##### 22 TAC §217.19, §217.20

The Texas Board of Nursing withdraws the proposed repeal of §217.19 and §219.20 which appeared in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7845).

Filed with the Office of the Secretary of State on January 24, 2008.

TRD-200800341  
Katherine Thomas  
Executive Director  
Texas Board of Nursing  
Effective date: January 24, 2008  
For further information, please call: (512) 305-6823



##### 22 TAC §217.19, §217.20

The Texas Board of Nursing withdraws the proposed new §217.19 and §219.20 which appeared in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7845).

Filed with the Office of the Secretary of State on January 24, 2008.

TRD-200800340  
Katherine Thomas  
Executive Director  
Texas Board of Nursing  
Effective date: January 24, 2008  
For further information, please call: (512) 305-6823



### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER F. EXPERIENCE REQUIREMENTS

##### 22 TAC §511.122

The Texas State Board of Public Accountancy withdraws the proposed amendments to §511.122 which appeared in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9053).

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800458  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: January 28, 2008  
For further information, please call: (512) 305-7848



#### SUBCHAPTER H. CERTIFICATION

##### 22 TAC §511.163

The Texas State Board of Public Accountancy withdraws the proposed amendments to §511.163 which appeared in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9056).

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800459  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: January 28, 2008  
For further information, please call: (512) 305-7848



#### CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

#### SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

##### 22 TAC §523.132

The Texas State Board of Public Accountancy withdraws the proposed amendments to §523.132 which appeared in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9072).

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800457



J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: January 28, 2008  
For further information, please call: (512) 305-7848



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER C. OTHER PROVISIONS

###### 19 TAC §74.24

The State Board of Education (SBOE) adopts an amendment to §74.24, concerning credit by examination. The amendment is adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9205) and will not be republished. The section establishes provisions relating to acceleration for primary school grade levels and credit for secondary school academic subjects. The adopted amendment requires an annual report by an outside auditor for examinations developed by The University of Texas at Austin and Texas Tech University. The audit is to review a subset of examinations to confirm alignment with the Texas Essential Knowledge and Skills (TEKS).

General provisions in 19 TAC §74.24 include the option for school districts to administer examinations developed by Texas Tech University or The University of Texas at Austin for credit for secondary school academic subjects.

During the February 2007 meeting of the SBOE Committee on Instruction, the committee chair instructed Texas Education Agency (TEA) staff to send correspondence requesting that the two institutions provide the information necessary for review of each of their examinations used for credit by examination. Correspondence was sent to the institutions requesting the review. Staff members from both universities responded that the process for aligning the examinations with the TEKS is underway for some examinations and completed for others.

During the July 2007 committee meeting, public testimony raised additional concerns regarding the examinations. The committee chair asked staff to investigate the possibility of a third party review of the updated examinations. During the September 2007 meeting, the committee instructed staff to draft proposed changes to the rule for action at the November 2007 meeting that would require an annual report by an outside auditor to confirm TEKS alignment of a subset of examinations developed by The University of Texas at Austin and Texas Tech University.

During the November 2007 meeting, the SBOE approved for first reading and filing authorization a proposed amendment to §74.24 that would add language in subsection (a)(2) specifying that these two entities shall ensure that their assessments are aligned with the TEKS, arrange for a third-party audit of 20% of

their assessments annually, and report the results of each audit to the TEA by May 31 of each year.

During the January 2008 meeting, the SBOE approved for second reading and final adoption the amendment to §74.24. The SBOE adopted the amendment with an effective date of September 1, 2008. The earliest the first audit results are due is May 2009, based on the effective date of the amendment.

Following is a summary of the public comment received and corresponding SBOE response regarding the proposed amendment.

**Comment.** A representative of the Texas Statewide Network of Assessment Professionals and Northside Independent School District expressed appreciation to the SBOE for the rule action requiring outside audits.

**Response.** The SBOE agrees.

The amendment is adopted under the Texas Education Code, §28.023, which authorizes the State Board of Education to establish guidelines by which a school district shall develop or select for board review examinations for acceleration for each primary school grade level and for credit for secondary school academic subjects.

The amendment implements the Texas Education Code, §28.023.

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 January 28, 2008.

TRD-200800362

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: September 1, 2008

Proposal publication date: December 14, 2007

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

## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §501.51

The Texas State Board of Public Accountancy adopts an amendment to §501.51, concerning Preamble and General Principles, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9012). The text of the rule will not be republished.

The amendment to §501.51 will replace the phrase "of thought and action" in subsection (b) with the phrase "in fact and in appearance" and the rule referenced in subsection (h) is changed from §501.52(9) to §501.52(8).

The amendment will function by providing greater clarity and consistency regarding license holders' independence.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800368

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 17, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 305-7848



### 22 TAC §501.52

The Texas State Board of Public Accountancy adopts an amendment to §501.52, concerning Definitions, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9013). The text of the rule will not be republished.

The amendment to §501.52 will: replace the phrase "certificate or registration holder" with the word "person" and add the word "Accounting" to paragraph (2); replace the phrase "American Institute of Certified Public Accountants" with "AICPA", and add the acronym "PCAOB", add the phrase "or international" to paragraph (4)(A); replace the phrase "American Institute of Certified Public Accountants" with "AICPA" and add the phrase "or international" to paragraph (4)(B); delete the definition for "Certificate or registration holder" formerly in paragraph (6); renumber the original paragraph (7) as paragraph (6); renumber the original paragraph (8) as paragraph (7); replace the word "person" with "party" and add the phrase "or professional accounting work" to paragraph (7); renumber the original paragraph (9) as paragraph (8); replace the phrase "certificate or registration holder" with the word "person", delete the word "a", add the phrase "professional accounting services", delete the word "service", add

the phrase "or professional accounting work, and includes:" and delete the phrase "service involving the use of accounting, at-testing, or auditing skills." and delete subparagraphs (A) - (C) which includes: "(A) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof; (B) the furnishing of management or financial advisory or consulting services; (C) the preparation of tax returns or the furnishing of advice or consultation on tax matters;", reletter subparagraph (D) to subparagraph (A), and reletter subparagraph (E) to subparagraph (B) in new paragraph (8); renumber the original paragraph (10) as paragraph (9); replace "person" with "party" in paragraph (9); renumber the original paragraph (11) as paragraph (10); replace the phrase "certificate or registration holder" with the word "person's" in paragraph (10); renumber the original paragraph (12) as paragraph (11); add the phrase "or other comprehensive basis of accounting" in paragraph (11); renumber the original paragraph (13) as paragraph (12); add the word "sole" and replace "or professional or other corporation or other business" with "corporation or other legally recognized business entity" in paragraph (12); renumber the original paragraph (14) as paragraph (13); replace the word "certificate" with "licensee", replace the word "certificate or registration holder" with "person", and replace the word "certificate or registration holder" with "person" in paragraph (13); renumber the original paragraph (15) as paragraph (14); add a new definition of "Out-of-state practitioner and out of state firm," that "means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act" and insert that definition as the new paragraph (15); delete "or" and add "or Compliance Assurance" in paragraph (16); replace "or professional or other corporation, or other business individual, partnership, corporation, registered limited liability partnership or limited liability company" with "sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity" and add the phrase "that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section" to paragraph (17); replace "practicing" with "the client practice of" in paragraph (19); replace "person" for "firm or individual", replace "accounting" with "Accounting" and add "Professional Accounting Work" in paragraph (20); add the word "Accounting" to paragraph (21); add "(s)" to the "statement" in paragraph (21)(A); delete the word "and" in paragraph (21)(C); add "(E) providing forensic accounting services; and" and "(F) providing internal auditing services" to paragraph (21); replace the following language "when used with reference to financial statements, either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made. It also includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special

knowledge or competence" with the language "an opinion, report, or other document prepared in connection with an attest service that states or implies assurance as to the reliability of the financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself" in the new paragraph (22).

The amendment will function by providing clearer definitions that are consistent with changes in the Texas Public Accountancy Act as well as changes in other Board rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800369  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 17, 2008  
Proposal publication date: December 7, 2007  
For further information, please call: (512) 305-7848



## SUBCHAPTER B. PROFESSIONAL STANDARDS

### 22 TAC §501.60

The Texas State Board of Public Accountancy adopts an amendment to §501.60, concerning Auditing Standards, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9016). The text of the rule will not be republished.

The amendment to §501.60 will replace the phrase "certificate or registration holder" with the word "person" and add the phrase "Public Company Accounting Oversight Board."

The amendment will function by allowing Board to enforce auditing standards promulgated by the Public Company Accounting Oversight Board in addition to those promulgated by other standard setting institutions over any person who provides profes-

sional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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Proposal publication date: December 7, 2007  
For further information, please call: (512) 305-7848



### 22 TAC §501.61

The Texas State Board of Public Accountancy adopts an amendment to §501.61, concerning Accounting Principles, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9017). The text of the rule will not be republished.

The amendment §501.61 will replace the phrase "certificate or registration holder" with the phrase "person or person practicing under a practice privilege as provided for in §901.462 of the Act"; and add "(s)" to "statement"; and replace the phrase "In such a case, the certificate, or registration holder's" with the word "The".

The amendment will function by allowing the Board to enforce generally accepted accounting principles over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act, including those persons licensed in another state who perform that work in this state.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800371

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 17, 2008  
Proposal publication date: December 7, 2007  
For further information, please call: (512) 305-7848



## 22 TAC §501.62

The Texas State Board of Public Accountancy adopts an amendment to §501.62, concerning Other Professional Standards, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9017). The text of the rule will not be republished.

The amendment to §501.62 will replace the phrase "certificate or registration holder" with the word "person" in the first sentence; and replace the phrase "generally recognized" with "national or international" in paragraph (5).

The amendment will function by allowing the Board to enforce professional standards over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800372  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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Proposal publication date: December 7, 2007  
For further information, please call: (512) 305-7848



## SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

### 22 TAC §501.70

The Texas State Board of Public Accountancy adopts an amendment to §501.70 concerning Independence without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9018). The text of the rule will not be republished.

The amendment to §501.70 will: replace the phrase "certificate or registration holder" with the word "person"; add the word "accounting"; add "or professional accounting work," add ", the PCAOB" and add "national or international".

The amendment will function by allowing the Board to enforce independence standards, including those promulgated by the Public Company Accounting Oversight Board, over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800373  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 17, 2008  
Proposal publication date: December 7, 2007  
For further information, please call: (512) 305-7848



### 22 TAC §501.71

The Texas State Board of Public Accountancy adopts an amendment to §501.71 concerning Receipt of Commissions and Other Compensation without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9019). The text of the rule will not be republished. The amendment to §501.71 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (b), and (c); replace the phrase "licensee or the licensee's firm" with the phrase "person" in subsection (a); adds the phrase "pays or agrees to pay" in subsection (c); deletes the phrase "to another person" from subsection (c); deletes the phrase "to such other persons" from subsection (c); deletes the phrase "the other person is" from subsections (c)(1) and (c)(2); replaces the phrase "to persons formerly engaged in the practice of public accountancy" with a "." in subsection (e); and deletes subsection (f). The amendment will function by allowing the Board to enforce its rule regarding the receipt of commissions and other compensation over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800374

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 17, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 305-7848



## 22 TAC §501.72

The Texas State Board of Public Accountancy adopts an amendment to §501.72 concerning Contingency Fees without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9020). The text of the rule will not be republished. The amendment to §501.72 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (b), (c), and (d); add the word "accounting" to subsection (a); add the phrase "or professional accounting work" to subsection (a); add the phrase "professional accounting" to subsection (a); add the phrase "or professional accounting work" to subsection (a); replaced the phrase "licensee or the licensee's firm" with the word "person" in subsection (b); delete subsection (e); and renumber subsection (f) as subsection (e). The amendment will function by allowing the Board to enforce its rule regarding contingency fees over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800375

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 17, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 305-7848



## 22 TAC §501.73

The Texas State Board of Public Accountancy adopts an amendment to §501.73 concerning Integrity and Objectivity without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9021). The text of the rule will not be republished.

The amendment §501.73 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (b), and (d); add the word "accounting" in subsections (a) and (b); add the phrase "or professional accounting work" in subsections (a), (b) and (d); replace the phrase "as there is reasonable support for the position" with the phrase "as any tax position taken complies with standards set forth in Circular 230 issued by the Internal Revenue Service and AICPA Statements on Standards for Tax Services."; delete subsection (d); renumber subsection (e) as subsection (d); and renumber subsection (f) as subsection (e).

The amendment will function by allowing the Board to enforce its rule regarding integrity and objectivity over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 28, 2008.

TRD-200800376

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 17, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 305-7848



## 22 TAC §501.74

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.74 concerning Competence without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9022). The text of the adopted rule will not be republished.

The adopted amendment to §501.74 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (a)(1), (a)(2), (b), (c), and (d); add the word "accounting" in subsection (a); add the phrase "or professional accounting work" in subsection (a); add the word "accounting" to subsection (a)(1); add the phrase "or professional accounting work" to subsection (a)(1); delete the sentence "The certificate or registration holder may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services." in subsection (a)(2); replace the phrase "through these means" with the phrase "to perform professional accounting services or professional accounting work" in subsection (a)(2); add the phrase "accounting or professional accounting work" to subsection (a)(2); replace the words "suffi-

cient data" with the phrase "and maintain appropriate documentation" in subsection (d); add subsection (e) "Interpretive comment: The person may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services."

The adopted amendment will function by allowing the Board to enforce its rule regarding competence over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act, as well as greater clarity regarding cases where such a person is not competent to perform professional accounting services.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §501.75

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.75, concerning Confidential Client Communications, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9023). The adopted text of the rule will not be republished.

The adopted amendment to §501.75 will replace the phrase "certificate or registration holder" with the word "person" and add the word "accounting" and the phrase "or professional accounting work".

The adopted amendment will function by allowing the Board to enforce its rule regarding confidential client communications over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §501.76

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.76 concerning Records and Work Papers, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9024). The adopted text of the rule will not be republished.

The adopted amendment to §501.76 will replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (a)(2), (a)(3), (b), (c), (c)(1), (c)(2), (c)(3), (f), and (g); replace the word "whether" with the word "either" in subsection (a); delete the phrase "the form of" from subsection (a); replace the phrase "computer readable format" with the phrase "other useable form" in subsection (a); delete the phrase "for personnel time and photocopying" from subsection (a); replace the word "working" with the word "work" in subsection (a)(3); replace the phrase "certificate or registration holder's" with "person's" in subsections (a)(3) and (c)(2); replace the word "working" with the word "work" in subsections (a)(3), (c), (c)(1), (c)(2), (c)(3), (d), (e), and (f); replace the word "papers" with the word "documents" in subsections (c)(1) and (f); replace the word "documents" for the words "worksheets" in subsections (e)(1), (e)(2), and (e)(4) and "papers" in subsection (f).

The adopted amendment will function by allowing the Board to enforce its rule regarding records and work papers over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §501.77

The Texas State Board of Public Accountancy adopts an amendment to §501.77, concerning Acting through Others, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9026). The text of the rule will not be republished.

The amendment to §501.77 will replace the phrase "certificate or registration holder" with the word "person" in subsection (a).

The amendment will function by allowing the Board to enforce its rule regarding acting through others over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.78

The Texas State Board of Public Accountancy adopts an amendment to §501.78, concerning Withdrawal or Resignation, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9026). The text of the rule will not be republished.

The amendment to §501.78 will replace the phrase "certificate or registration holder" with the word "person" in subsections (a) - (c); add the phrase "to provide public accounting services and public accounting work" to subsection (a); and replace the reference to "§501.90(17)" with "§501.90(16)" in subsection (c).

The amendment will function by allowing the Board to enforce its rule regarding withdrawal or resignation over persons who provide professional accounting services or professional accounting

work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

### 22 TAC §501.80

The Texas State Board of Public Accountancy adopts an amendment to §501.80, concerning Practice of Public Accountancy, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9027). The text of the rule will not be republished.

The amendment to §501.80 will replace the phrase "certificate or registration holder" with the word "person", replace the phrase "issued by the board" with the phrase "or qualifies under a practice privilege", and add the phrase "or qualifies under a practice privilege" to subsection (a); change the reference in subsection (c) from "§501.52(9)" to "§501.52(8)" and from "§501.52(19)" to "§501.52(21)".

The amendment will function by allowing the Board to enforce its rule regarding the practice of public accountancy over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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



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## 22 TAC §501.81

The Texas State Board of Public Accountancy adopts an amendment to §501.81, concerning Firm License Requirements, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9028). The text of the rule will not be republished.

The amendment to §501.81 will remove the phrase "including a sole proprietorship", add the phrase "or offer to provide", and add the phrase "issued by the board or qualifies under a practice privilege" to subsection (a); replace the language in subsection (b) with the following language "(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state."; delete subsection (b)(1) and (2); add subsection (c) that reads "(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs: (1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards; (2) an examination of prospective financial information that is to be performed in accordance with the Statement on Standards of Attestation Engagements; or (3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor."; reletter former subsection (c) to subsection (d); reletter former subsection (d) to subsection (e); replace the phrase "certificate or registration holder" with the word "person", correct the reference from subsection (c) to subsection (d), and add a new paragraph (3) that reads "(3) pursuant to a practice privilege." to the new subsection (e); reletter former subsection (e) to subsection (f); replace the word "individual's" with "person's", delete the word "third", replace "certificate holder" with "person", and replace the phrase "unregistered entity" with the phrase "an unlicensed firm" in the new subsection (f); reletter subsection (f) to subsection (g); replace the phrase "certificate or registration holder" with the word "person", change the reference from "§501.2(9)" to "§501.52(8)", change the reference from "§501.52(19)" to "§501.52(21)", and change the reference from subsection (c) to subsection (d) in the new subsection (g).

The amendment will function by requiring a firm license rule that is consistent with changes in the Texas Public Accountancy Act concerning out of state certified public accountants who practice in this state as well as allowing the Board to enforce its rule regarding firm license requirements over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.82

The Texas State Board of Public Accountancy adopts an amendment to §501.82, concerning Advertising, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9029). The text of the rule will not be republished.

The amendment to §501.82 will replace the phrase "certificate or registration holder" with the word "person" in the subsections (a), (a)(1), (a)(2), (c), (d), (e)(1), and (f); add the word "cellular", add the phrase "or any other electronic means", and delete the word "or" from subsection (b)(2); delete the word "annoy" and delete the ", " after "alarm" in subsection (b)(7); replace the phrase "a person" with "anyone" in subsections (b)(9) and (e)(1) - (3); replace the word "the person" with the word "anyone" in subsection (b)(10); replace the word "persons" with the word "parties" in subsections (d); replace the word "a person" with the word "anyone" in subsection (e); delete the phrase ", which are currently not being provided by another certificate or registration holder" in subsection (e)(3); and delete the phrase "radio and television" in subsection (f).

The amendment will function by taking into account changes in technology as well as allowing the Board to enforce its rule regarding advertising over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.84

The Texas State Board of Public Accountancy adopts an amendment to §501.84, concerning Form of Practice, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9031). The text of the rule will not be republished.

The amendment to §501.84 will replace the phrase "certificate or registration holder" with the word "person", replace the phrase "a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation, or business corporation" with the phrase "a sole proprietorship, partnership, limited liability partnership, liability company, corporation or other legally recognized business entity that provides professional accounting services or professional accounting work"; and replace the phrase "state, territory, or foreign country" with the word "jurisdiction".

The amendment will function by providing a clearer rule that allows the Board to enforce its rule regarding advertising over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.85

The Texas State Board of Public Accountancy adopts an amendment to §501.85, concerning Complaint Notice, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9031). The text of the rule will not be republished.

The amendment to §501.85 will replace the phrase "certificate or registration holder" with the word "person".

The amendment will function by allowing the Board to enforce its rule regarding complaint notices over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

### 22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90, concerning Discreditable Acts, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9032). The text of the rule will not be republished.

The amendment to §501.90 will: replace the phrase "certificate or registration holder" with the word "person" in the first sentence and in paragraph (18); delete the phrase "to a person" at the end of paragraph (5); replace the phrase "a voluntary" with the word "any" and replace the word "agency" with the phrase "federal regulatory or licensing body" in paragraph (7); replace the word "authority" with the word "body" in paragraph (13); delete paragraph (16); renumber paragraph (17) as paragraph (16), replace the phrase "certificate holder" with "person" in new paragraph (16); renumber paragraph (18) as paragraph (17); renumber paragraph (19) as paragraph (18); and replace the word "Individuals" with the word "Persons" in new paragraph (18).

The amendment will function by allowing the Board to enforce its rule regarding discreditable acts over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act. In addition, the rule makes clear that any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action is a discreditable act. Finally, the rule removes the discreditable act of causing a breach in the secu-

ity of the CPA exam so that issue can be addressed in the rules regarding the CPA exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.91

The Texas State Board of Public Accountancy adopts an amendment to §501.91, concerning Reportable Events, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9033). The text of the rule will not be republished.

The amendment to §501.91 will add subsection (a)(4) and (5) to read "(4) an unappealable adverse finding by any state or federal court or an agreed settlement in a civil action against a licensee concerning professional accounting services or professional accounting work; or (5) the loss of a professional license from another state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding." and add the phrase "and further defined in §501.90(18) and §519.7 of this title" in subsection (e).

The amendment will function by making it easier for the Board to become aware of any legal action that results in an adverse finding against a license holder, thereby facilitating investigations into possible violations of the Board's rules and the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.92

The Texas State Board of Public Accountancy adopts an amendment to §501.92, concerning Frivolous Complaints, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9034). The text of the rule will not be republished.

The amendment to §501.92 will replace the phrase "certificate or registration holder" with the word "person"; replace the phrase "certificate holder" with the word "person" and add a new, final sentence that reads: "A person who makes a complaint against another person that is groundless and brought in bad faith, for the purpose of harassment, or for any other improper purpose shall be in violation of this rule."

The amendment will function by allowing the Board to enforce its rule regarding frivolous complaints over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act. In addition, the rule makes clear that the Board considers complaints made in bad faith to be violations of the rules of professional conduct and sanctionable.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §501.93

The Texas State Board of Public Accountancy adopts an amendment to §501.93, concerning Responses, without changes to the proposed text as published in the December 7, 2007, issue of the

*Texas Register* (32 TexReg 9035). The text of the rule will not be republished.

The amendment to §501.93 will: replace the phrase "An applicant, certificate or registration holder" with the phrase "A person" in subsections (a) and (b); replace the phrase "the applicant, certificate or registration holder" with the phrase "a person" in subsection (b); replace the word "working" with the word "work" in subsections (b) and (c); delete the word "board" in subsection (c); delete the phrase ", certificate holder" from subsection (d); add a new subsection (f) which reads "(f) Interpretive Comment. In this section, the term board includes board staff."

The amendment will function by allowing the Board to enforce its rule regarding responses over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act. In addition, the rule makes clear that Board staff represents the Board for purposes of making requests for substantive responses to Board inquiries.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER B. CERTIFICATION BY EXAMINATION

### 22 TAC §511.21

The Texas State Board of Public Accountancy adopts an amendment to §511.21, concerning Examination Application, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9036). The text of the rule will not be republished.

The amendment to §511.21 will replace the word "subject" with the word "section" in subsection (d); replace the phrase "reexamination applicant" with the word "application" and replace the word "continue" with the phrase "be verified" in subsection (e).

The amendment will function by creating a rule regarding the application for the CPA exam that is consistent with the requirements of the computer based exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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### 22 TAC §511.22

The Texas State Board of Public Accountancy adopts an amendment to §511.22, concerning Initial Filing of the Application of Intent, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9037). The text of the rule will not be republished.

The amendment to §511.22 will add the phrase "at least one section of" in subsection (a)(1) and replace the phrase "Section 521.11" with the phrase "Section 521.12" in subsection (c).

The amendment will function by being a rule regarding the procedure for filing the application of intent to take the CPA exam that is consistent with the requirements of the computer based exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

### 22 TAC §511.52

The Texas State Board of Public Accountancy adopts an amendment to §511.52 concerning Recognized Colleges and Universities without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9038). The text of the rule will not be republished.

The amendment to §511.52 will replace the phrase "passing upon" with the phrase "considering"; add the phrase "--Higher Learning Commission" to paragraph (2); add the phrase "--Commission on Institutions of Higher Education" to paragraph (3); replace the phrase "Association of Schools and Colleges" with the phrase "Commission on Colleges and Universities" in paragraph (4); add the phrase "--Commission on Colleges" to paragraph (5); add the phrase "--Commission for Senior Colleges" at the end of paragraph (6); and add a new paragraph (8) that states "The board recognizes and accepts only community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter for degree and course requirements.)"

The amendment will function by clarifying which colleges and community college programs are recognized by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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### 22 TAC §511.56

The Texas State Board of Public Accountancy adopts an amendment to §511.56 concerning Educational Qualifications under the Act without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9039). The text of the rule will not be republished.

The amendment to §511.56 will replace the word "and" with the words "consisting of" in subsection (b)(2); renumber (b)(3) to (b)(2)(A) and (b)(4) to (b)(2)(B); delete the word "complete" at the start of subsections (b)(2)(A) and (b)(2)(B); add the following text "upper level" after the word "of" in subsection (b)(2)(A)

and (b)(2)(B); in subsection (b)(2)(A) delete the word "and"; in subsection (b)(2)(B) replace "20" with "24"; add the following "; and" at the end of (b)(2)(B) and add a new subsection (b)(2)(C) is created with the text "a 3 semester hour board approved ethics course as defined by board rule, §511.58 of this chapter".

The amendment will function by clarifying the education requirements for candidates for a license issued by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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### 22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58 concerning Definitions of Related Business Subjects without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9039). The text of the rule will not be republished.

The amendment to §511.58 will add the word "level" to subsection (a), in subsection (b) replace the text "Effective July 1, 2005, the" with the text "The", and replace "21" with "24"; replace the word "division" with the word "level" in subsection (b); in subsection (c) replace the text "21" with "24"; and in subsection (c) replace "21" with "24" and delete the text "effective July 1, 2005.

The amendment will function by reflecting the increased number of passing semester hours of upper division courses required by the Board as part of the education requirement for candidates of licenses issued by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER D. CPA EXAMINATION

### 22 TAC §511.70

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.70, concerning Grounds for Disciplinary Action of Candidates, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9040). The adopted text of the rule will not be republished.

The adopted amendment to §511.70 in section (d) will replace the text "applicant" with "candidate"; in subsection (e)(1) replace the text "examinee" with the text "candidate"; in subsection (e)(2) replace the text "examinee" with the text "candidate"; in subsection (e)(3) replace the text "examination" with the text "candidate"; in subsection (e)(4) replace the text "examinee" with the text "candidate"; and in subsection (e)(5) replace the text "examinees" with the text "candidates".

The adopted amendment will function by reflecting a change in terminology from "examinee" with "candidate."

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption of this rule amendment.

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

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Texas State Board of Public Accountancy  
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### 22 TAC §511.72

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.72, concerning Uniform Examination without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9041). The adopted text of the rule will not be republished.

The adopted amendment to §511.72 in subsection (a) twice will replace both "National Association of State Boards of Accountancy" with "NASBA" and "American Institute of Certified Public Accountants" with "AICPA"; subsection (b) replace the text "subjects" with the text "sections"; in subsection (c) replace the following text "board authorization form and one other" with the text "Notice to Schedule form provided by NASBA" and add the following text ", and a second form of identification such as a board issued form" after the text "candidate".

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the adopted amendment will be in effect:

The amendment will function by establishing a rule regarding the uniform examination that reflects changes in requirements as well as changes imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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### 22 TAC §511.73

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.73, concerning Notice to Candidate to Schedule Taking a CPA Exam Subject, without changes to the proposed text as published in the December 7, 2007 issue of the *Texas Register* (32 TexReg 9042). The adopted text of the rule will not be republished.

The adopted amendment to §511.73 will replace the text "Subject" with "Section" in the rule's title; in subsection (a) following the text "examination" add the following text "within the next ninety days from the approval of the eligibility application."; in subsection (b) replace the word "applicant" with the word "candidate", replace the text "National Association of State Boards of Accountancy" with the text "NASBA", replace the text "subject" with the text "section", replace the word "is" with the word "has" after the text "applicant", add the word "applied", and delete the text "eligible. The actual fee set by the board is identified in §521.2 of this title (relating to Examination Fees)."; in subsection (c) after the text "schedule" add the text "with the vendor" and replace the text "subject" with the text "section"; and in subsection (d) replace the text "subject" with the text "section"; and replace the last use of the text "section" with the text "this rule".

The adopted amendment will function by reflecting changes to the schedule for payment as well as the notice provided by the Board to exam candidates imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §511.77

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.77 concerning Scoring without changes to the proposed text as published in the December 7, 2007 issue of the *Texas Register* (32 TexReg 9043). The adopted text of the rule will not be republished.

The adopted amendment to §511.77 will replace the text "Grading" with the text "Scoring" in the rule's title; replace all text "grade" with the text "score"; replace the text "grades" with the text "score"; replace text "the grading authority" with the following text "NASBA"; and delete the "%".

The adopted amendment will function by reflecting the changes made to grading the exam imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §511.79

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.79 concerning Request for Review without changes to the proposed text as published in the December 7, 2007 issue of the *Texas Register* (32 TexReg 9044). The adopted text of the rule will not be republished.

The adopted amendment to §511.79 will delete the text "and Appeal" from the rule's title; delete text ": (1)"; replace the text "paper" with the text "result"; replace the text "American Institute of Certified Public Accountants" with "AICPA"; replace the text "graded the paper; or" with the text "scored the uniform examination."; and delete paragraph (2) including the following text "(2) may upon written requests and payment of the requisite fee, inspect a copy of the questions and answers at the board office during regular office hours, and submit a written statement which may be an appeal to the American Institute of Certified Public Accountants which originally graded the paper. Copies of the examination questions or answers may not be made."

The adopted amendment will function by a test score review reflecting changes imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §511.80

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.80 concerning Granting of Credit, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9044). The adopted text of the rule will not be republished.

The adopted amendment to §511.80 will in subsection (a) replace the text "grade" with the text "score", replace the text "sub-

ject" with the text "section", and replace the following text "the candidate took the subject" with the text "from the actual date of notification of passing score results"; in subsection (b) replace all text "subjects" with the text "sections"; delete subsections (c), (c)(1), (c)(2), (c)(3), and (c)(4); renumber subsection (d) as subsection (c); in new subsection (c) replace the first "subject" with the text "section"; renumber subsection (e) as subsection (d); and replace the word "subjects" with the word "sections" in the new subsection (d).

The adopted amendment will function by reflecting changes made to granting credit for the CPA exam imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §511.82

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.82 concerning Application for Transfer of Credits without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9045). The adopted text of the rule will not be republished.

The adopted amendment to §511.82 will in subsection (a)(1) replace the text "graded" with the text "scored"; in subsection (b) replace the following text "It shall be submitted to the executive director, and shall" with the following text "to"; and replace the last use of the text "grades" with the text "scores".

The adopted amendment will function by reflecting changes in the procedure for the transfer of credits imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §511.83

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.83 concerning Application of Transfer of Credit without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9046). The adopted text of the rule will not be republished.

The adopted amendment to §511.83 will delete subsection (a); renumber subsection (b) as subsection (a); delete the following text "taken after January 1, 2004," in new subsection (a)(1); replace the text "grade" with the text "score" in new subsection (a)(1); replace the word "subject" with the word "section" in new subsections (a)(1), and (a)(2); renumber subsection (c) as subsection (b) and replace the word "subjects" with the word "sections" in the new subsection (b); renumber subsection (d) as subsection (c); replace the word "subjects" with the word "sections" in the new subsection (c); replace "American Institute of Certified Public Accountants" with "AICPA" and replace "National Association of State Boards of Accountancy" with "NASBA"; insert new sections (d), (e), and (f) with the text "(d) Any candidate allowed conditional credit for sections passed must pass the remaining sections within the next eighteen (18) months from the date conditional credit was awarded or forfeit credit received for the section. (e) Any candidate allowed conditional credit for section(s) passed must pass the remaining section(s) within the next eighteen (18) months from the date conditional credit was awarded for forfeit credit received for the section. (f) Any candidate who has earned the right to partial reexamination and who fails to pass the remaining sections of the examination within the applicable time limits shall lose the right to partial reexamination and must take the entire examination upon later application."

The adopted amendment will function by updating of the rule regarding the transfer of credit for partial completion of the CPA exam to reflect changes imposed by the computer based exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## 22 TAC §511.84

The Texas State Board of Public Accountancy adopts the repeal of §511.84 concerning Partial Examination after Transfer of Credit without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9047).

The repeal will remove a rule that is no longer relevant.

The repeal will function by the elimination of a rule that is no longer relevant.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §511.87

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.87 concerning Loss of Credit without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9048). The adopted text of the rule will not be republished.

The adopted amendment to §511.87 will replace the word "examinations" with the phrase "testing windows" in subsection (a) and add the phrase "(See §511.102 of this chapter for the definition of testing window.)" at the end of subsection (a).

The adopted amendment will function by reflecting changes imposed by the computer-based exam regarding loss of credit.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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## SUBCHAPTER E. VENDOR REQUIREMENTS

### 22 TAC §511.102

The Texas State Board of Public Accountancy adopts an amendment to §511.102 concerning CPA Examination Availability without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9049). The text of the rule will not be republished.

The amendment to §511.102 will: delete subsection (a); delete the following text from subsection (b): "(b) Beginning in 2005, the"; add the word "The" to the beginning of former subsection (b); replace the word "months" with the phrase "testing windows" in former subsection (b); replace "," with "/" between January and February, April and May, July and August, and October in the former subsection (b); delete "and" between October and November and replace the ", " between August and October with an "and" in the former subsection (b).

The amendment will function by reflecting changes in examination schedules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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### 22 TAC §511.103

The Texas State Board of Public Accountancy adopts an amendment to §511.103 concerning Examination Scheduling without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9049). The text of the rule will not be republished.

The amendment to §511.103 will add the text "by the vendor" in subsection (a).

The amendment will function by clarifying who maintains call centers.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §511.104

The Texas State Board of Public Accountancy adopts an amendment to §511.104 concerning Test Center Locations without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9050). The text of the rule will not be republished.

The amendment to §511.104 will add a new subsection (b) add the following text "The board may require that the CPA exam be discontinued at a test center due to: (1) inadequate staffing; (2) breach in security; or (3) other conditions that are not in compliance with requirements set out by the Board, AICPA or NASBA."; renumber former subsection (b) with subsection (c); in subsection (c) add the following text "All test center locations will conform to the standards established by the Americans with Disabilities Act of 1990."

The amendment will function by explicitly stating the reasons why a test center may be closed as well as a statement that testing centers will conform to the standards established by the Americans with Disabilities Act of 1990.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §511.105

The Texas State Board of Public Accountancy adopts an amendment to §511.105 concerning Test Center Check-In without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9051). The text of the rule will not be republished.

The amendment to §511.105 will insert the following text "such as a valid driver license or unexpired passport," in subsection (a).

The amendment will function by providing examples of what kinds of government issued documents are acceptable at test center check in.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §511.107

The Texas State Board of Public Accountancy adopts an amendment to §511.107 concerning No-Show, Late Arrival and Late Cancellation without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9052). The text of the rule will not be republished.

The amendment to §511.107 will insert the following text "set by the test vendor" and delete the text "of \$35.00" in subsection (b)(2).

The amendment will function by establishing who will set the additional fee when a candidate requests a schedule change or a cancellation.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER F. EXPERIENCE REQUIREMENTS

### 22 TAC §511.121

The Texas State Board of Public Accountancy adopts an amendment to §511.121 concerning Application for Approval of Experience without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9052). The text of the rule will not be republished.

The amendment to §511.121 will replace the previous language in subsection (b)(1) including "and/or compilation, services" with "services as defined in §501.52(2)"; replace subsection (b)(2) text with the following text "Professional accounting services or professional accounting work as defined in §501.52(21)"; delete subsections (b)(3), (b)(4), (b)(5); in subsection (d) delete the following text "to the executive director".

The amendment will function by clarifying what constitutes acceptable work experience.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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### 22 TAC §511.123

The Texas State Board of Public Accountancy adopts an amendment to §511.123 concerning Reporting Work Experience without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9054). The text of the rule will not be republished.

The amendment to §511.123 will add a new subsection (a) that states "One year of experience shall consist of full or part-time employment that extends over a period of not less than one year and not more than three years and includes not fewer than 2000 hours of performance of services described in Section 511.122."; renumber the original subsection (a) as subsection (b); delete the former subsection (b) which read "The board requires full time work experience of 40 hours per week, but may consider work experience earned on a part time basis, provided at least 20 hours per week are worked."

The amendment will function by stating how many hours of work experience is necessary for candidates seeking a license issued by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER H. CERTIFICATION

### 22 TAC §511.161

The Texas State Board of Public Accountancy adopts an amendment to §511.161 concerning Qualifications for Issuance of a Certificate without changes to the proposed text as published in

the December 7, 2007, issue of the *Texas Register* (32 TexReg 9055). The text of the rule will not be republished.

The amendment to §511.161 will delete the text "successfully completed the Uniform CPA Examination" from the first sentence of the rule.

The amendment will function by establishing a rule without duplicate provisions.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

#### 22 TAC §523.101

The Texas State Board of Public Accountancy adopts the repeal of §523.101, concerning Savings Provisions and Dispositions Table, without changes to the proposal as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9057).

The repeal will remove a rule that is repetitious with §523.131.

The repeal will function by eliminating a redundant rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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#### 22 TAC §523.102

The Texas State Board of Public Accountancy adopts an amendment to §523.102, concerning Purpose and Definitions, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9058). The text of the rule will not be republished.

The amendment to §523.102 will replace the original subsection (c) with a new subsection (c) that states: "(c) Licensees may participate in a variety of sponsored learning activities, such as "live classroom programs" or "self-study programs". (1) "Live programs" are those educational processes that are designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the internet which includes the following: (A) Workshops, seminars, and conferences with substantial interaction by a qualified instructor/facilitator. A sponsor will issue certificates of completion at the end of the class for participants who attended the entire program. (B) "Blended programs or interactive computer programs" include: (i) "Group self-study" programs that are based on self-study materials presented in a group format with substantial interaction from a qualified instructor who is responsible for answering participant's questions or who leads the discussion of individual topics presented in the materials. (ii) "Webinar" is a program that is a web cast and the participants are led by a discussion leader/facilitator that interacts with the web cast instructors. Sponsors will issue certificates of completion at the end of the class. (2) "Self-study programs" provide ongoing feedback for the participant regarding the learning process without substantial interaction of an instructor/facilitator. (A) This type of program clearly defines learning objectives and manages the participant through the learning process by: (i) requiring frequent response to questions that test for understanding of the material presented: providing evaluative feedback to incorrectly answered questions; and (ii) providing evaluative feedback to correctly answered questions. (B) Sponsor will provide a certificate of completion upon successfully passing the final exam. (C) Self-study programs include the following: (i) programs that are taken on the internet individually and involve the participant answering questions that test for understanding the course and passing a final exam to earn credit for the course. A certificate of completion is immediately received once the participant successfully passes the final exam. (ii) courses in which course materials are sent to a participant and after completing the course and the final exam, the participant sends the final exam to the sponsor either electronically or by mail for grading. The sponsor may send the grade either electronically or by mail to the participant."

The amendment will function by clarifying what the board means when it refers to a variety of sponsored learning activities.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.103

The Texas State Board of Public Accountancy adopts an amendment to §523.103, concerning Standards for CPE Program Development, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9059). The text of the rule will not be republished.

The amendment to §523.103 will replace the phrase "in areas such as" with the phrase "pertaining to the profession of accounting such as, but not limited to," in subsection (b)(1); delete the phrase "in areas such as" in subsection (b)(1); adds the phrase "but not limited to" in subsection (b)(2); and adds subsection (c) that states: "(c) Staff meetings or other settings that do not include technical issues that enhance a licensee's professional development can not be claimed for CPE credit."

The amendment will function by clarifying what the board expects from courses that increase a CPA's professional competence.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

### 22 TAC §523.110

The Texas State Board of Public Accountancy adopts an amendment to §523.110, concerning Establishment of Mandatory CPE Program, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9060). The text of the rule will not be republished.

The amendment to §523.110 will delete the phrase "Board Rules and" and add the phrase "Requirements for Licensees" in paragraph (6).

The amendment will function by referencing the new title of another rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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### 22 TAC §523.111

The Texas State Board of Public Accountancy adopts an amendment to §523.111, concerning Mandatory CPE Reporting, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9061). The text of the rule will not be republished.

The amendment to §523.111 will insert the phrase "or retain" and delete the phrase "Board Rules and" and add the phrase "Requirements for Licensees" in subsection (a).

The amendment will function by referencing the new title of another rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112, concerning Mandatory CPE Attendance, with changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9061). The changes are new paragraph (5) with the text "A licensee who has been granted exemptions under paragraph (3)(B), (C), (D), and (F) of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report a minimum of 40 CPE hours prior to re-entry into the work force." The text of the rule will be republished.

The amendment to §523.112 will delete the phrases "For all" and "completed after January 1, 2005" and ", this CPE". In paragraph (1)(A) replace the words "twelve month" with the word "license". Insert the phrase "CPE earned prior to the first twelve month license period will not be applied toward the three year requirement." to the end of paragraph (1)(B). In paragraph (3)(A), delete the text "Board Rules and" and insert the phrase "Requirements for Licensees" at the end of paragraph (3)(A). In paragraph (3)(B)(i)(II) add the phrase "professional accounting services or professional". In paragraph (3)(B)(ii) insert the phrase "hours prior to re-entering the workforce.", delete the phrase "Board Rules and." and insert the phrase "Requirements for Licensees". Insert new paragraph (5) with the text "A licensee who has been granted exemptions under paragraph (3)(B), (C), (D), and (F) of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report a minimum of 40 CPE hours prior to re-entry into the work force. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirement for Licensees)."

The amendment will function by providing greater clarity regarding the continuing professional education requirements necessary to maintain or re-activate a license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§523.112. *Mandatory CPE Attendance.*

A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. CPE, except as provided by board rule shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

(1) The exception to the requirement of 120 hours of CPE is an initial licensee, one who is paying the license fee for the first time.

(A) To be issued a license that is less than twelve months from the date of certification or registration, the licensee does not have a CPE hour requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(B) To be issued a license for the first full twelve-month license period, the licensee does not have a CPE accrual requirement and can report zero hours. CPE earned prior to the first twelve month license period will not be applied toward the three year requirement.

(C) To be issued a license for the second full twelve-month period, the licensee must report a minimum of 20 CPE hours. The hours must be accrued in the 12 months preceding the license period.

(D) To be issued a license for the third full twelve-month license period, the licensee must report a total of at least 60 CPE hours that were accrued in the 24 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(E) To be issued a license for the fourth full twelve-month period, the licensee must report 100 CPE hours that were accrued in the 36 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(F) To be issued a license for the fifth and subsequent license periods, the licensee must report a total of at least 120 CPE hours that were accrued in the 36 months preceding the license period, and at least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(2) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement must pay the required fees and penalties and must accrue the minimum CPE credit hours missed.

(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report prior to re-entering the workforce a minimum of 40 CPE hours. Such CPE hours shall be accrued from the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services or professional accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I) - (III) of this clause, the questions shall be resolved in favor of including the work as an "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue 40 CPE hours prior to re-entering the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).

(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance that is acceptable to the board.

(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to report any CPE hours.

(5) A licensee who has been granted exemptions under paragraph (3)(B), (C), (D), and (F) of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report a minimum of 40 CPE hours prior to re-entry into the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).

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

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## 22 TAC §523.114

The Texas State Board of Public Accountancy adopts an amendment to §523.114, concerning Disciplinary Actions Relating to CPE, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9063). The text of the rule will not be republished.

The amendment to §523.114 will delete the phrase "Board Rules and" before the text "Ethics Course" and after the text "Ethics Course" insert the following phrase "Requirements for Licensees" in subsection (a). After the text "§523.111 of this title" insert the following text "relating to Mandatory CPE Reporting". After text "§523.112 of this title" insert the following text "relating to Mandatory CPE Attendance". In subsection (d) delete the following text "Public Accountancy".

The amendment will function by providing greater clarity regarding the persons'/licensees' requirements to complete and document mandatory continuing professional education participation or face disciplinary actions.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.115

The Texas State Board of Public Accountancy adopts an amendment to §523.115, concerning Credits for Instructors and Discussion Leaders, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9064). The text of the rule will not be republished.

The amendment to §523.115 will divide the existing §523.115 text so each sentence will now be placed in its own respective subsection from (a) - (d) and add an additional subsection (e)

with text "Instructors cannot claim credit for teaching entry level accounting courses.

The amendment will function by providing greater clarity regarding the continuing professional education requirements necessary to maintain a license for a CPA who is a continuing professional education instructor or discussion leader.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.116

The Texas State Board of Public Accountancy adopts an amendment to §523.116, concerning Credits for Published Articles and Books, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9064). The text of the rule will not be republished.

The amendment to §523.116 will replace in the title the following words "Credits for" with the words "Authors of". Also, insert the following text "Authors of published articles and books may claim" before the following text "CPE credit hours". Delete the following text "may be claimed for published articles and books".

The amendment will function by providing greater clarity regarding the continuing professional education requirements and credit for their published works for those CPAs who are published authors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.117

The Texas State Board of Public Accountancy adopts an amendment to §523.117, concerning Minimum Hours Required Per CPE Reporting Period as a Participant, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9065). The text of the rule will not be republished.

The amendment to §523.117 will insert the text "program." after the following text "participant in a qualified CPE". Add the phrase "To qualify the hours must be from" after "program". Delete the word "in". Delete the following text "of the requirement"; replace the word "title" with the word "chapter", after the first "title" insert the text "relating to Credits for Instructors and Discussion Leaders"; after the second "title" replace "Credits for Instructors and Discussion Leaders and Credits for Writers" with "Authors of".

The amendment will function by provide greater clarity regarding the requirements to maintain a license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.118

The Texas State Board of Public Accountancy adopts an amendment to §523.118, concerning Limitation for Non-Technical Courses, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9066). The text of the rule will not be republished.

The amendment to §523.118 will delete the following text "CPE credit hours may be claimed for non-technical courses limited to not more than 20 credit hours in the reporting period" and insert the following text "A licensee may not claim more than



fifty percent of the total CPE credit hours required from the non-technical area in any reporting period".

The amendment will function by providing greater clarity regarding the continuing professional education requirements and the board's emphasis on technical knowledge, competence, and proficiency.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.119

The Texas State Board of Public Accountancy adopts an amendment to §523.119, concerning Alternative Sources of CPE, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9067). The text of the rule will not be republished.

The amendment to §523.119(a)(6) will delete the following text "National Association of Accountants' Management Accounting Practices Committee"; renumber the remaining subsections under section (a), so the former subsection (a)(7) becomes subsection (a)(6), and the former (a)(8) becomes subsection (a)(7). In subsection (b) replace the following text "must receive prior approval before credit may be claimed." with the following text "should be claimed at the time the license renewal is submitted on the appropriate form "Claiming Credit from a Non-Registered Sponsor" justifying the reason the CPE credit hours are being claimed.". Add the following subsection (c) with the following phrase "Licensees may not claim more than fifty percent of their hours from non-registered sponsors."

The amendment will function by clarifying the continuing professional education requirements necessary to maintain a license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.120

The Texas State Board of Public Accountancy adopts an amendment to §523.120, concerning Standards for CPE Reporting, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9068). The text of the rule will not be republished.

The amendment to §523.120(a)(1) will add the following text "name and identification number" after the text "sponsor".

The amendment will function by providing greater clarity regarding the continuing professional education reporting requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §523.121

The Texas State Board of Public Accountancy adopts an amendment to §523.121, concerning CPE for non-CPA Owners, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9068). The text of the rule will not be republished.

The amendment to §523.121 will delete the following text "Board Rules and" in subsection (c). In subsection (c) after the

text "Ethics Course" add the following text "Requirements for Licensees".

The amendment will function by providing greater clarity regarding the existence of non-CPA Owners and their continuing professional education requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

### 22 TAC §523.130

The Texas State Board of Public Accountancy adopts an amendment to §523.130 concerning Board Rules and Ethics Course without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9069). The text of the rule will not be republished.

The amendment to §523.130 will delete the text "Board Rules and" and insert the following text "Requirements for Individuals" in rule name. Delete subsection (b). Renumber subsection (c) to subsection (b) and replace the following text "Beginning on January 1, 2005, every" with the text "A" at the beginning of subsection (b). Delete the following text "after January 1, 2005" from subsection (b). Delete subsection (d). Renumber subsection (e) with subsection (c). In subsection (c) replace "individual" with the word "licensee." In subsection (c) replace the phrase "certificate or registration holder" with "licensee". In subsection (c) add the following text "annual" before the following text "license renewal notice if due." Renumber subsection (f) with subsection (d) and in subsection (d) replace the text "certificate or registration holder" with the following text "licensee". Also in subsection (d) replace the following text "an interactive computer-based" with the following word "a" and replace "(b)(5)" with "(c)(1)". Renumber subsection (g) with (e). In subsection (e) replace the following text "certificate or registration holder" with "person". Delete subsection (h). Delete the Attached Graphic Figure: 22 TAC §523.130(h).

The amendment will function by providing greater clarity regarding the ethics course requirements necessary to maintain a license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



### 22 TAC §523.131

The Texas State Board of Public Accountancy adopts an amendment to §523.131 concerning Board Approval of Ethics Course Content after January 1, 2005 without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9070). The text of the rule will not be republished.

The amendment to §523.131 will delete "after January 1, 2005" from the rule name, add the text "The" to the beginning of subsection (a). In subsection (a) delete the following text "Effective January 1, 2005 the", "Board Rules and", and "Course content shall be approved only after the developer of the course demonstrates the course meets the following objectives." Insert the text "Requirements for Licensees", "CPE committee of the", "for initial approval and upon request thereafter. The primary objectives of the Ethics Course shall be to:" Insert new subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(5)(A), (a)(5)(B), and (a)(5)(C) with the following text (1) encourage the licensee to become educated in the ethics of the profession; (2) convey the intent of the Board's Rules of Professional Conduct in the licensee's performance of professional accounting services or professional accounting work, and not mere technical compliance, (3) apply ethical judgment in interpreting the rules and determining the public interest. The public interest should be placed ahead of self-interest, even if it means a loss of job or client, (4) emphasize the ethical standards of the profession, as described in this section; and (5) review and discuss the Board's Rules of Professional Conduct and their implications for persons in a variety of practices, including (A) a licensee engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.52 of this title (relating to Definitions); (B) a licensee holder employed in industry who provides internal accounting and auditing services; and (C) a licensee employed in education or in government accounting or auditing. Delete former subsection (a)(1) "the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning;" delete former subsection (a)(2) "the course shall be designed to teach the core values of the profession: integrity, objectivity and independence, as ethical prin-

principles in addition to rules of conduct;" delete former subsection (a)(3) "the course shall be designed to teach compliance with the spirit and intent of the board's Rules of Professional Conduct, in addition to technical compliance with the Rules; and". Delete former (a)(4) "the course shall address ethical considerations and the application of the board's Rules of Professional Conduct to all aspects of professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice." In subsection (b)(4) insert the word "sufficient"; In subsection (c) replace the text "To be approved, the course must be taught in either a live instructor format or a computer-based interactive format, as defined in §523.101(b)(5) of this title (relating to CPE Purpose and Definitions). with the text "Course content shall be approved only after demonstrating, either in a live instructor format or a blended program format or interactive (computer based) format, as defined in §523.102(c)(1) of this title (relating to CPE Purpose and Definitions), that the course contains the underlying intent established in the following criteria: (1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession: integrity, objectivity and independence, as ethical principles in addition to rules of conduct; (2) the course shall address ethical considerations and the application of the Board's Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice; and (3) the course shall convey the spirit and intent of the Board's Rules of Professional Conduct in the licensee's performance of accounting services or professional accounting work, and not mere technical compliance." At the beginning of subsection (d) replace the words "Each ethics course approved pursuant to this section will" with the words "Ethics Courses may". At the beginning of subsection (e) replace the phrase "As a part of each course" with the phrase "At the conclusion of each course," the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

The amendment will function by clarifying the ethics course content requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §523.133

The Texas State Board of Public Accountancy (Board) adopts the repeal of §523.133 concerning Course Content and Board Approval without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9073).

The adopted repeal will remove a rule that is no longer relevant.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

### 22 TAC §523.140

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.140 concerning Program Standards, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9074). The adopted text of the rule will not be republished.

The adopted amendment to §523.140 will replace the sentence "The stated program objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing it." with the following sentences "The sponsor "program" must clearly state in the course materials, registration materials and advertisements related to the course, the objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. Sponsors are responsible for distributing accurate information about their programs." in subsection (a); add paragraph (1) with the following statements "The stated learning objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing it."; renumber subsection (b) to paragraph (2); replace the word "should" with the word "must" in paragraph (2); add a new subsection "(b)" which states "The program developer must organize the program around the stated learning objectives. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter."; add paragraph (1) that reads "The program developer

should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate;"; add paragraph (2) which reads "The program developer should provide materials for the participants that explain the learning objective in detail."; replace the phrase "A program developer" with the word "Instructors" in subsection (c); replace the text "The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. Between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes." with the new text "Course material should be reviewed by a qualified party other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In case of short or once only programs, more reliance may be placed on the competence of the presenter." in subsection (d); replace the text "Course material should be reviewed by a qualified person(s) other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In the case of short or once only programs, more reliance may be placed on the competence of the presenter." with the text "All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this title (relating to Evaluation)." in subsection (e); replace the text "Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. After January 1, 2005, an ethics course not approved by the board under §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) must clearly state in the course materials, registration materials and any advertisements related to the course that it is not approved for ethics credit pursuant to §523.131 of this title and the course will not satisfy the ethics course requirements of §523.130 of this title (relating to Board Rules and Ethics Course). Sponsors are responsible for distributing accurate information about their programs." with the text "Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this title (relating to CPE Purpose and Definitions)." in subsection (f); replace the text "Instructors must be qualified both with respect to program content and teaching methods used. Sponsors should evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors. After January 1, 2005, the sponsor of an ethics course taught by an instructor who is not under contract with the board pursuant to §523.132 of this title (relating to Board Contracted Ethics Instructors after January 1, 2005) must clearly state in the course materials, registration materials and any advertisements related to the course that the instructor is not a board contracted ethics instructor under §523.132 of this title and the course will not satisfy the ethics course requirements of §523.130 of this title (relating to Board Rules and Ethics Course)." with the text "Sponsors are responsible for ensuring the participants register their attendance during the program. The sponsor is responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early. Refer to §523.142 of this title (relating to Time Credit Measurement)." in subsection (g); and replace "Sponsors should comply with the standard by encouraging: (1) enrollment only by eligible participants; (2) timely distribution of materials; (3) com-

pletion of any advance preparation; and (4) assigning the appropriate number of credit hours for participants who arrive late or leave before a program is completed. The number of participants and physical facilities should be consistent with the teaching method(s) specified. The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented discussion program should be considerably less than for a lecture program. Class size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled." with the text "Sponsors must comply with all CPE rules including §523.143 of this title (relating to Sponsor's Record)." in subsection (h).

The adopted amendment will function by providing clarity regarding the ethics course program standards.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §523.141

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.141, concerning Evaluation, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9076). The adopted text of the rule will not be republished.

The adopted amendment to §523.141 will replace the phrase "take the form of:" with the phrase "consist of evaluation forms or questionnaires upon completion of the program."; and delete subsections (b)(1), (b)(2), and (b)(3); add subsection (d) with the sentence "(d) Sponsors are responsible for collecting evaluation forms from CPA participants."

The adopted amendment will function by providing clarity regarding the ethics course evaluations and questionnaires.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §523.142

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.142, concerning Program Time Credit Measurement, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9077). The adopted text of the rule will not be republished.

The adopted amendment to §523.142 will delete the phrase "The shortest recognized program should consist of one contact hour." in subsection (a); delete the word "group" in subsection (a); replace the sentence "Under this standard, a credit hour is granted only for each contact hour" with the sentence "One-half CPE credit increments (equal to 25 minutes) are permitted after the first contact hour has been earned in a given learning activity" in subsection (a).

The adopted amendment will function by providing clarity regarding the program length requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §523.143

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.143, concerning Sponsor's Record, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9078). The adopted text of the rule will not be republished.

The adopted amendment to §523.143 will add the letter "(b)" to the reference "§523.141" in paragraph (7).

The adopted amendment will function by providing greater clarity regarding the continuing professional education sponsor's record requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §523.144

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.144, concerning Board Registered CPE Sponsors, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9078). The adopted text of the rule will not be republished.

The adopted amendment to §523.144 will delete the phrase "after January 1, 2005" in the rule's title; delete the phrase "Board Rules and" from subsection (a)(2); add the phrase "Requirements for Licensees" to subsection (a)(2); delete the phrase "To implement the program initially, sponsors previously registered with the board will be assigned an initial registration term based on the month of their current registration" from subsection (f); replace the word "Chapter" with the word "title" and add the phrase "relating to Sponsor Review Program" after the text "523.147 of this title" in subsection (i).

The adopted amendment will function by providing greater clarity regarding the requirements for a board registered continuing professional education sponsor.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

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## 22 TAC §523.145

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.145 concerning Obligations of the Sponsor without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9079). The adopted text of the rule will not be republished.

The adopted amendment to §523.145 will add a new subsection (a) to read "(a) Sponsors must comply with the program standards as stated in §523.140 of this title (relating to Program Standards."; subsection (a) will be renumbered to subsection (b); replace the word "persons" with the word "parties" in subsection (b)(3); renumber subsection (b) to subsection (c); and delete the sentence "Sponsor reviews will not commence until after June 1, 2005." in subsection (c).

The adopted amendment will function by providing greater clarity regarding the obligations of a continuing professional education program sponsor.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §523.147

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.147, concerning Sponsor Review Program, without changes to the proposed text as published in the Decem-

ber 7, 2007, issue of the *Texas Register* (32 TexReg 9080). The adopted text of the rule will not be republished.

The adopted amendment to §523.147 will add the phrase "comply with all applicable Board rules including §523.102 of this title (relating to CPE Purpose and Definitions), §523.103 of this title (relating to Standards for CPE Program Development), and this subchapter".

The adopted amendment will function by providing greater clarity and awareness of the sponsor review program designed to ensure that CPE sponsors comply with board mandated requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

### 22 TAC §525.1

The Texas State Board of Public Accountancy adopts an amendment to §525.1 concerning Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9081). The text of the rule will not be republished.

The amendment to §525.1 will delete ", or Renewal of a License for Individual with Criminal Backgrounds" from the title; replace the words "shall not examine" with "may deny"; replace "CPA candidate" with the phrase "candidate's application to take the CPA exam for a period not to exceed five years from the date of application, and shall not" in subsection (a), deleted the phrase "which results in incarceration" and add the word "or"; from subsection (a); replace the words "not examine a CPA candidate" with "deny a candidates' application to take the CPA exam, the application to", delete the phrase "or renew a license," in subsection (b); delete the words "provided by accountants" from subsection (b)(2); replace the word "person" for the word "individual" and delete the word "and" in subsection (b)(3); insert a new paragraph (5) that states "fraud or dishonesty as an element of the offense; and"; insert a new paragraph (6) that states "all conduct indicating a lack of fitness to serve the public as a pro-

fessional accountant;" replace the phrase "sit for" with the word "take" in subsection (e); delete the phrases "initial examination" and on those reexamination candidates" in subsection (e)(2); replace the word "scores" for the formerly used word "grades" and replace the word "take" for the formerly used words "sit for" in subsection (e)(3); insert a new subsection (f) that states "A candidate that has not been permitted to take the CPA exam as a result of having been convicted of a felony offense must provide evidence of rehabilitation upon rehabilitation as the board may request"; renumber the original subsections (f), (f)(1), (f)(2), and (f)(3) as subsections (g), (g)(1), (g)(2), and (g)(3). Delete subsection (g) and (h) and incorporate in new rule.

The amendment will function by clarifying the board's options when considering applications for the Uniform CPA Examination, issuance of the CPA certificate, a license, or renewal of a license for individuals with criminal backgrounds and provides notice of what the board expects from those applicants.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-200800438  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## 22 TAC §525.2

The Texas State Board of Public Accountancy adopts new rule §525.2 concerning Renewal of a License for Individuals with Criminal Backgrounds without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9083). The text of the rule will not be republished.

The new rule adoption of the proposed new rule will make it easier for the Board to become aware of any criminal conviction against a license holder, thereby facilitating investigations into possible violations of the board's rules and the Texas Public Accountancy Act.

The new rule will function by requiring a license holder to report any criminal conviction at the time of renewal, thereby facilitating investigations into possible violations of the board's rules and the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules

deemed necessary or advisable to effectuate the Act and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-200800440  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER O. STATE SALES AND USE TAX

##### 34 TAC §3.341

The Comptroller of Public Accounts adopts the repeal of §3.341, concerning sales of governmental publications, records, or documents, without changes to the proposal as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8425).

This rule is no longer needed since its substance already exists in other comptroller rules.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, Chapter 151.

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 January 22, 2008.

TRD-200800280  
Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
Effective date: February 11, 2008  
Proposal publication date: November 23, 2007  
For further information, please call: (512) 475-0387



### 34 TAC §3.368

The Comptroller of Public Accounts adopts the repeal of §3.368, concerning certified public accountant (CPA) audit program, without changes to the proposal as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8426).

This section is being repealed pursuant to House Bill 3319, 80th Legislature, 2007, which repealed the program under Tax Code, §151.0232, effective September 1, 2007.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, §151.0232.

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

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TRD-200800283  
Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



## CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

### SUBCHAPTER D. CLAIMS PROCESSING-- PAYROLL

#### 34 TAC §5.39

The Comptroller of Public Accounts (comptroller) adopts amendments to §5.39, concerning hazardous duty pay, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9585).

House Bill 2498, 80th Legislature, 2007, amended Government Code, §659.305, in order to increase the amount of hazardous duty pay that full-time corrections officers of the Texas Department of Criminal Justice may receive. Both Senate Bill 737 and House Bill 2498, 80th Legislature, 2007, also remove the \$300 per month cap for hazardous duty pay for full-time state employees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L. Subchapter L governs hazardous duty pay.

The adopted amendment implements Government Code, Chapter 659, Subchapter L.

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

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Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION SUBCHAPTER B. CORRECTIONAL CAPACITY

##### 37 TAC §152.37

The Texas Board of Criminal Justice adopts new §152.37, concerning Addition to Capacity, without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9301) and will not be republished.

The purpose of the rule is to establish the maximum capacity of two units that have been transferred from the Texas Youth Commission to the Texas Department of Criminal Justice.

No comments were received regarding the new rule.

The new rule is adopted under Texas Government Code, §492.001 and §492.013.

Cross Reference to Statutes: Texas Government Code, Chapter 499, Subchapter E.

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

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TRD-200800318  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: February 12, 2008  
Proposal publication date: December 14, 2007  
For further information, please call: (512) 463-0422





CHAPTER 163. COMMUNITY JUSTICE  
ASSISTANCE DIVISION STANDARDS

**37 TAC §163.31**

The Texas Board of Criminal Justice adopts the amendments to §163.31, concerning Sanctions, Programs, and Services, without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9301) and will not be republished.

The amendments are necessary to add clarity.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code, §509.003 and §509.016.

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 January 23, 2008.

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Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice

Effective date: February 12, 2008

Proposal publication date: December 14, 2007

For further information, please call: (512) 463-0422



**37 TAC §163.36**

The Texas Board of Criminal Justice adopts the amendments to §163.36, concerning Mentally Impaired Offender Supervision, without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9303) and will not be republished.

The amendments are necessary to add clarity.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code, §509.003 and §614.013.

Cross Reference to Statutes: Texas Government Code, §509.003 and §614.013.

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.

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Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422

**37 TAC §163.39**

The Texas Board of Criminal Justice adopts the amendments to §163.39, concerning Residential Services, with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9303).

The amendments are necessary to add clarity and conform to state and federal law.

Comments were received on January 8, 2008, from Lynda Woolbert, Executive Director for the Coalition for Nurses in Advanced Practice.

Comment: Ms. Woolbert suggested changes to subsection (m)(1), which specifies the type of health care professional who ensures that meals meet nationally recommended allowances for basic nutrition. She pointed out that a registered nurse with a Bachelor of Science degree in nursing would also be qualified to provide this service.

Response: A registered nurse with a Bachelor of Science degree, as well as a physician assistant, are among those qualified to review meals to ensure they meet recommended allowances. The recommended change has been incorporated into the appropriate sentence in subsection (m)(1).

Comment: Ms. Woolbert requested a change to subsection (n)(2)(A)(v), which addresses the requirement for on-call emergency health care providers if there is no emergency facility nearby. She suggested that because rural communities do not always have an on-call physician available, that an advanced practice nurse would be qualified to provide the on-call service mentioned in this subsection of the rule. Ms. Woolbert recommended that the proposed language "Emergency on-call physician, dentist, and mental health professional services..." be changed to: "Emergency on-call health care professionals to provide medical, dental and mental health services...."

Response: The term "health care professionals" can be too broadly interpreted, as it could be construed to include an emergency medical technician (EMT), registered nurse or LVN. Those health care professionals are not qualified to provide the level of emergency health care intended in this rule. However, an advanced practice nurse and a physician assistant are qualified to provide the service when a physician is not available, so the phrase was changed to incorporate "advanced practice nurse or physician assistant" into subsection (n)(2)(A)(v).

Comment: Ms. Woolbert suggested a change in subsection (n)(3), Health Screening and Medical Examinations, which concerns the questionnaire for health screening that documents inquiries and observations about other health problems. She recommended that "responsible physician" be changed to "health authority."

Response: Because the screening questionnaire is developed before the patient is seen and is not dependent upon the provider who performs the medical examination, this suggestion was accepted and incorporated into subsection (n)(3)(A)(v).

Comment: Ms. Woolbert suggested that because there are other health care professionals who can legally prescribe medications in Texas, that in subsection (n)(6)(B), (7)(E) and (9)(C)(vii), "physician" be changed to "practitioner," which is defined in the Texas Occupations Code, §551.003(34) and Texas Health and Safety Code, §483.001(12) and §481.002(39).

Response: The substitution of "practitioner" for "physician" makes the language too broad, as the definitions for "practitioner" in the above mentioned citations include anybody who can prescribe medications, including veterinarians. However, the language has been changed in subsection (n)(6)(B), (7)(E) and (9)(C)(vii) to include that an advanced practice nurse and a physician assistant can prescribe medication in those circumstances.

In addition to the comments above, during the comment period, the General Counsel determined that a change was necessary in subsection (i), Incident Notification. Because judges do not supervise CSCDs, the phrase "...the judge or one of the judges supervising the department..." was changed to "...the district judge who sits on the Community Justice Council or, if applicable, the judge designated to perform administrative duties for the district courts trying criminal cases...."

The amendments are adopted under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §492.013.

§163.39. *Residential Services.*

(a) General Administration.

(1) Purpose. Residential facilities and contract residential beds funded by the Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD) shall provide the courts with a sentencing alternative for the purpose of:

(A) Confining offenders placed on community supervision and others who are eligible in accordance with statutes;

(B) Providing sanctions, services, and programs to modify criminal behavior, deter criminal activity, protect the public and restore victims of crime;

(C) Strengthening and expanding the options that are available to judges to impose alternatives other than imprisonment for offenders who violate court-ordered conditions of community supervision; and

(D) Reducing the offender's likelihood of a subsequent arrest, recidivism and technical violations.

(2) Feasibility Studies. A judicial district interested in establishing a residential Community Corrections Facility (CCF) shall first conduct and prepare a feasibility study in accordance with the TDCJ-CJAD Feasibility Study Guidelines-Community Corrections Facility. The product and results of such feasibility study shall be submitted to TDCJ-CJAD. After the receipt by TDCJ-CJAD of the initial feasibility study related to a proposed CCF, the Community Supervision and Corrections Department (CSCD) may be required to provide supplemental information or additional materials for further review and consideration.

(3) Notice of Construction or Operation of a CCF.

(A) If a CSCD or private vendor operating under a contract with a CSCD or judicial district proposes to construct or operate a CCF within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship, the CSCD shall prominently post an outdoor sign at the proposed location of the facility. The sign shall be at least 24 by 36 inches in size written in lettering at least two (2) inches in size. The sign shall state that a correctional or rehabilitation facility is intended to be located on the premises, and provide the name and

business address of the CSCD. The municipality or county in which the CCF is to be located may require the sign to be both in English and a language other than English, if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

(B) The CSCD shall provide notice of the proposed location of the facility to the commissioners court of the county and/or governing body of the municipality where the facility is intended to be located not later than 60 days before the CSCD begins construction or operation of the facility. The notice shall contain the following:

(i) A statement of the entity's intent to construct or operate a correctional or rehabilitation facility in an area;

(ii) A description of the proposed location of the facility; and

(iii) A statement that Texas Local Government Code, Chapter 244 governs the procedure for notice of and consent to the facility.

(4) Public Meetings. A CSCD or private vendor having a contract with a CSCD or judicial district shall not establish a CCF unless the community justice council serving the CSCD has held a public meeting before the action is taken. In addition, a CSCD may not expend funds provided by the TDCJ-CJAD to lease or purchase real property, construct buildings, or use a facility or real property acquired or improved with state funds for a CCF unless the community justice council serving the CSCD has held a public meeting before the action is taken. The public meeting shall be held at a site as close as practicable to the location at which the proposed action is to be taken. The meeting shall not be held on a Saturday, Sunday or legal holiday. The meeting shall begin after 6:00 p.m. More than 30 days before the date of the meeting, the department that the facility is to serve, or a vendor proposing to operate a facility, at a minimum shall:

(A) Publish by advertisement a notice that is not less than three and a half (3 1/2) inches by five (5) inches of the date, hour, place and subject of the hearing as required in subsection (a)(4) of this rule in three (3) consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located. The notice shall specifically state the address of the facility or property on which a proposed action is to be taken and provide a description of the proposed action.

(B) Mail a copy of the notice to each police chief, sheriff, city council member, mayor, county commissioner, county judge, school board member, state representative and state senator who serves or represents the area, unless the proposed facility has been previously authorized to operate at a particular location by a community justice council.

(5) Maximum Resident Capacity and Facility Utilization. The maximum resident capacity of a CCF shall be defined as the total number of residents who can be housed at the facility at any given time as delineated by the operating agency in the most current community justice plan and approved by the TDCJ-CJAD director. CCFs funded through TDCJ-CJAD shall reach 90 percent capacity within the first six (6) months of operation and maintain a minimum of 90 percent thereafter, using appropriate and eligible placements only. Any revisions to the maximum and minimum resident capacities for the CCF shall be subject to the approval by the TDCJ-CJAD through the community justice plan amendment process.

(6) Contract Residential Services. Business entities, agencies or persons contracting with CSCDs or judicial districts for residential services shall comply with all applicable competitive bidding

and other laws and regulations. CSCDs or judicial districts contracting with business entities, agencies or persons for residential services shall comply with any applicable competitive bidding and other laws and regulations. The CSCD director shall monitor, audit and inspect the performance and compliance of the service provider and vendor with the terms and conditions of the contract with the CSCD and with applicable laws and regulations.

(7) Mission Statement. The CSCD director and facility director shall prepare and maintain a mission statement that describes the general purposes and overall goals of the facility's programs.

(b) Personnel.

(1) Screening for Tuberculosis (TB) Infection. The CSCD director or facility director shall ensure that as soon as practicable but not later than seven (7) calendar days of assuming any duties within a CCF, all staff undergo a screening for TB infection. Follow-up screening for TB infection shall be conducted on all staff, at a minimum, once every year from the anniversary date of the initial screening. The results of all screenings shall be maintained on file.

(2) Required Personnel.

(A) Each facility with an employment component shall have a designated employment coordinator whose duties and responsibilities include assisting residents in obtaining/maintaining employment. The employment coordinator shall be responsible for addressing other employment issues for residents such as résumé development, interviewing skills/techniques and appropriate dress for job interviews.

(B) Every facility shall have a designated staff member whose duties and responsibilities include facilitating or ensuring the required cognitive and other facility programs are accomplished.

(3) Criminal Histories and Arrest Records. Prior to employment and on at least an annual or more frequent basis thereafter, criminal histories and arrest records shall be obtained from both the Texas Department of Public Safety (DPS) and National Crime Information Center NCIC on each of the CCF's employees, contract vendor staff (if applicable) and volunteers. This requirement shall apply to both vendor contract and the CSCD operated CCFs. Upon verification that no new conviction(s) have occurred, an entry documenting such shall be made in the personnel file. The criminal history document and/or other arrest record documentation shall then be destroyed. Employees who have access to criminal histories must meet the Texas Department of Public Safety (DPS) criteria for accessing the Texas Law Enforcement Telecommunication System (TLETS) operated by the DPS or files containing a copy of an employee's or resident's criminal history.

(4) Residential Officer Certification. Governed by §163.33(f) of this title.

(5) Residential Personnel Training. Initial Training Requirements and Defensive Driving are governed by §163.33(j) of this title. Training Requirements for Monitoring Self-Administration of Medications are set forth in subsection (n)(10) of this rule.

(c) Building, Safety, Sanitation and Health Codes.

(1) Compliance. The CSCD director and facility director shall ensure that the facility's construction, maintenance and operations complies with all applicable state, federal and local laws, building codes and regulations related to safety, sanitation and health. Records of compliance inspections, audits or written reports by internal and external sources shall be kept on file for examination and review by the TDCJ-CJAD and other governmental agencies and authorities from

program inception forward. The CSCD director and facility director shall promptly notify the TDCJ-CJAD in writing of any circumstances wherein the facility or its operations do not maintain such compliance.

(2) Water Supply. The CSCD director or designee shall ensure that the facility's potable water source and supply is sanitary and approved by an independent, qualified agency or individual in compliance with the applicable governmental laws and regulations.

(3) Sanitation. The facility shall conform to the applicable sanitation and health regulations and codes.

(4) Waste. The liquid and solid wastes related to the facility shall be collected, stored and disposed of in accordance with a plan approved by the regulatory authority, agency or department.

(5) Physical Plant. The facility's buildings, including the improvements, fixtures, electric and heating and air conditioning, shall conform to all applicable building codes of federal, state and local laws, ordinances, regulations and minimum guidelines established by the TDCJ-CJAD for physical plants and facilities housing residents.

(6) Fires. The facility, its furnishings, fire protection equipment and alarm system shall comply with the regulations of the fire authority having jurisdiction. Fire drills are to be conducted at least quarterly. There shall be a written evacuation plan to be used in the event of a fire. The plan is to be certified by an independent qualified governmental agency or department or individual trained in the application of national and state fire safety codes. Such plan shall be reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The facility shall conduct fire inspections at least quarterly or at intervals approved by the fire authority having jurisdiction. Fire safety equipment located at the facility shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent. An annual inspection of the facility shall be conducted by the fire authority having jurisdiction or other qualified person(s).

(7) Emergency Plan. There shall be a written emergency plan for the facility and its operations, which includes an evacuation plan, to be used in the event of a major flood, storm or other emergencies. This plan shall be reviewed annually and updated, if necessary. Evacuation drills shall be conducted at least three (3) times yearly. Each shift at least yearly shall conduct an evacuation drill when the majority of residents are present. All facility personnel shall be trained in the implementation of the written emergency plan. The evacuation plan shall specify preferred evacuation routes, subsequent dispositions and temporary housing of residents and provisions for access to medical care or hospital transportation for injured residents and/or staff. The facility's emergency plan shall be distributed to local authorities such as law enforcement, state police, civil defense, etc. to keep them informed of their roles in the event of an emergency. The emergency plan shall include the following:

(A) Location of buildings/room floor plan;

(B) Use of exit signs and directional arrows that are easily seen and read; and

(C) Location(s) of publicly posted plan.

(d) Separate Offender Housing. The CSCD director and facility director shall ensure that a facility that is part of or attached to a detention facility or a correctional institution shall house facility residents separately from the offenders incarcerated in the detention facility. At no time shall the CCF residents/offenders be co-mingled with these incarcerated offenders.

(e) Program and Service Areas.

(1) Space and Furnishings. The facility shall have space and furnishings to accommodate activities such as group meetings, private counseling, classroom activities, visitation and recreation.

(2) Housekeeping and Maintenance. The CSCD director and facility director shall ensure the facility is clean and in good repair, and a housekeeping and maintenance plan is in effect.

(3) Other Physical Environment and Facilities Issues. In each facility:

(A) Space shall be provided for janitor closets which are equipped with cleaning implements;

(B) There shall be storage areas in the facility for clothing, bedding and cleaning supplies;

(C) There shall be clean, usable bedding, linens and towels for new residents with provision for exchange or laundering on at least a weekly basis;

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles;

(E) There shall be adequate control of vermin and pests;

(F) There shall be timely trash and garbage removal; and

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of all residents, staff and visitors.

(f) Supervision.

(1) Operations Manual. An operations manual shall be prepared for and used by each CCF which shall contain information and specify procedures and policies for resident census, contraband, supervision, physical plant inspection and emergency procedures, including detailed implementation instructions. The operations manual shall be accessible to all employees and volunteers. The operations manual shall include, at a minimum, the matters set forth in the Guidelines for the Policies and Procedures of the TDCJ-CJAD Funded Residential Facilities. The operations manual shall be submitted to the TDCJ-CJAD director for review and approval. The manual shall be approved by the TDCJ-CJAD director at least 60 days prior to the acceptance of any residents into the facility. The CSCD director and facility director shall ensure that the operations manual is reviewed at least every two (2) years, and new or revised policies and procedures are made available, including all changes, to designated staff and volunteers prior to implementation. This manual shall be submitted to the TDCJ-CJAD upon request or for auditing purposes.

(2) Staffing Availability. The CSCD director and facility director shall ensure that the facility has the staff needed to provide coverage of designated security posts, surveillance of residents and to perform ancillary functions. The facility shall have at least one (1) staff member on duty that is the same gender as the resident population.

(3) Activity Log. The CSCD director and facility director shall ensure that CCF staff maintain an activity log and prepare shift reports that record, at a minimum, emergency situations, unusual situations and incidents and all absences of residents from a facility.

(4) Use of Force. The CSCD director and facility director shall ensure that a CCF has written policies, procedures and practices that restrict the use of physical force to instances of self-protection, protection of residents or others or prevention of property damage. In no event shall the use of physical force against a resident be justifiable as punishment. A written report shall be prepared following all uses of

force, and promptly submitted to the CSCD director and facility director for review and follow-up. The application of restraining devices, aerosol sprays, chemical agents, etc. shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency situation for self-protection, protection of others or other circumstances as described previously.

(5) Use of Firearms. The CSCD director and facility director shall ensure that the possession of firearms by staff is banned and the use of firearms is prohibited in or on facility property except in the execution of official duties by certified peace officers or other duly licensed law enforcement personnel.

(6) Access to Facility. The facility shall be secured to prevent unrestricted access by the general public or others without proper authorization.

(7) Control of Contraband/Searches. All facilities shall incorporate into the facility operations manual a list of authorized items offenders are allowed to possess while a resident of the facility. All incoming residents shall receive a copy of this list during the intake/orientation process, along with a written explanation of the provisions of Texas Penal Code, Section 38.114, which states that any resident found to possess any item not provided by, or authorized by the facility director, or any item authorized or provided by the facility that has been altered to accommodate a use other than the originally intended use, may be charged with a Class C misdemeanor. Any employee or volunteer who provides contraband to a resident of a CCF may be charged with a Class B misdemeanor. There shall also be policies defining facility shakedowns, strip searches and pat searches of residents to control contraband and provide for its disposal.

(8) Levels of Security. The CSCD director and facility director shall ensure that appropriate levels of security are maintained for the population served by the facility at all times. These levels of security shall create, as a minimum, a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time. At the discretion of the facility director or designee, residents may be granted exterior movements. Exterior movements include, but are not limited to employment programs, community service restitution, support/treatment programs and programmatic incentives. The following minimum requirements shall be met for all exterior movements:

(A) The facility director or designee approves the exterior movement;

(B) A staff member orally advises the resident of the conditions and limitations of the exterior movement;

(C) The resident acknowledges in writing an understanding of the conditions and limitations of the exterior movement; and

(D) Exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) The resident meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement;

(ii) The requested absence will not exceed 72 hours unless there are unusual circumstances;

(iii) The resident provides an itinerary for the absence including method of travel, departure and arrival times and locations during the exterior movement;

(iv) The facility director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives; and

(v) A staff member shall make random announced or unannounced personal or telephone contacts with the resident to verify the location of the resident during the exterior movement.

(9) Emergency Furloughs. At the discretion of the facility director or designee, a resident may be granted an emergency furlough for the purpose of allowing a resident to attend a funeral, visit a seriously ill person, obtain medical treatment or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:

(A) The resident submits a written request for the emergency furlough;

(B) The facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister, rabbi, priest or other spiritual leader that the presence of the resident is appropriate;

(C) The resident provides a proposed itinerary including method of travel, departure and arrival times and locations during the emergency furlough;

(D) The requested absence shall not exceed 72 hours unless there are unusual circumstances;

(E) The court of original jurisdiction approves the travel if the resident will depart the State of Texas;

(F) The facility director or designee approves the itinerary and establishes the conditions of the emergency furlough; and

(G) The facility director or designee provides by e-mail or fax the approved itinerary to the CSCD director of the court of the original/sending jurisdiction prior to the date that the emergency furlough is approved to begin.

(10) Supervision Process. Governed by §163.5(c) of this title.

(11) The CCF shall ensure that Spanish language assistance and the translation of selected documents are provided for Spanish-speaking residents who cannot speak or read English.

(g) Resident Abuse, Neglect and Exploitation. The facility shall protect the residents from abuse, neglect and exploitation. In accordance with the Prison Rape Elimination Act of 2003 (Public Law 108-79), all CCFs shall establish a zero tolerance standard for the incidence of sexual assault. Each facility shall make prevention of offender sexual assault a top priority. The CCFs shall have policies and procedures in accordance with national standards published by the Attorney General of the United States. These policies and procedures shall include, but not be limited to the following:

(1) Detection, prevention, reduction and punishment of offender sexual assault;

(2) Standardized definitions to record accurate data regarding the incidence of offender sexual assault; and

(3) A disciplinary process for facility staff who fail to take appropriate action to detect, prevent and reduce sexual assaults, to punish residents guilty of sexual assault and to protect the Eighth Amendment rights of all facility residents.

(h) Rules and Discipline. There shall be documentation of program rule violations and the disciplinary process.

(1) Rules of Conduct. All incoming residents and staff shall receive written rules of conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.

(2) Limitations of Corrective Actions. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards participants. Limits shall include:

(A) No physical contact by staff shall be made on a resident;

(B) No profanity, sexual or racial comments shall be directed at residents by staff;

(C) Residents shall not be used to impose corrective actions on other residents;

(D) The severity of the corrective action shall be commensurate with the severity of the infraction; and

(E) The duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.

(3) Grievance Procedure. A grievance procedure shall be available to all residents in a CCF. The grievance procedure shall include at least one (1) level of appeal and shall be evaluated at least annually to determine its efficiency and effectiveness.

(4) Spanish translations of the disciplinary rules and procedures shall be provided for Spanish-speaking residents who cannot speak or read English.

(i) Incident Notification. Within 24 hours of occurrence, the CSCD director and facility director shall notify and report by telephone or fax all serious or unusual events pertaining to the facility's operations and staff to the district judge who sits on the Community Justice Council or, if applicable, the judge designated to perform administrative duties for the district courts trying criminal cases, the TDCJ Emergency Action Center (EAC) in Huntsville, Texas (Phone Number (936) 437-6600; Fax Number (936) 437-8996) and if applicable, the CSCD director of the original/sending jurisdiction if the incident involves a resident from that sending jurisdiction. The TDCJ-EAC shall be responsible for notifying the TDCJ-CJAD director and appropriate CJAD management staff. Such serious and unusual events for this purpose shall include, but are not limited to the following:

(1) The death of a resident or staff member while at the facility;

(2) Any incident which results in life threatening or serious bodily injury to a resident or staff member while at the facility or on assignment (including emergency furloughs or programmatic incentives) away from the facility;

(3) Major disturbance or riot at the facility or in its vicinity; and

(4) Any incident involving serious misconduct by facility staff, which may result in the filing of criminal charges or civil action;

(5) Any incidence of absconding by a resident convicted of an offense as identified in Title 5 of the Texas Penal Code (Title 5) and placed in the facility for such offense; and

(6) Any incidence of absconding by a resident who is suspected of committing a felony offense during the course of absconding from the facility or within 24 hours after leaving the facility.

(j) Residents' Rights. Residents shall be granted access to courts and any attorney licensed in the United States or a legal aid soci-

ety (an organization providing legal services to residents or other persons) contacting the resident in order to provide legal services. Such contacts include, but are not limited to: confidential telephone communications, uncensored correspondence and confidential visits.

(k) Resident Eligibility. A CSCD or other governmental entity that operates a residential facility, contracts for the operation of a residential facility or contracts for beds/services shall define a specific target population of medium to high risk/needs offenders to be served. Placement of offenders in a CCF shall only be by an order of the court, which may include a pre-trial agreement signed by the judge presiding over an established drug court. Applicable screening shall be conducted to include screening for substance abuse, medical and mental health issues and shall meet minimum eligibility criteria as outlined in this rule.

(1) CCFs shall accept only those offenders who meet the target population criteria as defined by the facility and are physically and mentally capable of participating in any program offered at the facility, if participation in the program is required of all residents in the facility. Exceptions to this requirement:

(A) Placement is prohibited by statute;

(B) The offender matches the profile of offenders historically committed to county jail/prison from the jurisdiction; or the offender has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision; and

(C) The local jurisdiction may house offenders convicted under Title 5 and in accordance with statute, in the CCF if Title 5 offenders are included in the facility's program proposal within the community justice plan that is submitted by the jurisdiction's community justice council and approved by the local judiciary. In currently operating facilities where the jurisdiction desires to add Title 5 offenders to the target population, a public meeting shall be held, in accordance with the law and TDCJ-CJAD standards and policy, to advise the public of the types of offenders/offenses who will potentially be placed in the facility. Public support shall be considered by the TDCJ-CJAD for final approval of the change in offender population to be targeted. If a jurisdiction has documentation that this requirement was previously met, it can provide that documentation to the TDCJ-CJAD for review and possible exemption from having an additional public meeting. If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in the Texas Government Code, §76.016, Victim Notification, the Texas Code of Criminal Procedure (TCCP) Chapter 56, Rights of Crime Victims and TCCP art. 42.21, Notice of Release of Family Violence Offenders.

(D) Prior or within ten 10 days after admission to the facility, the offender shall undergo a screening process to include a substance abuse screening instrument to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file. Should the offender not meet the facility defined eligibility criteria, the offender may be referred back to the court of original jurisdiction.

(2) Courtesy Supervision. CCFs shall, on a space available basis, accept eligible adult offenders needing the residential services on courtesy supervision from other jurisdictions. CSCDs that manage CCFs are responsible for the direct supervision of all residents in the CCF while in the residential placement.

(l) Denying Admission or Continued Placement. If an offender is placed into a CCF as a condition of community supervision and the offender is an inappropriate placement, by statute or standard,

or does not meet eligibility criteria of the facility as approved by the TDCJ-CJAD, the CSCD or facility director shall notify, in writing, the court of original jurisdiction of these circumstances. If a CCF facility has reached capacity at the time of the eligible offender's placement to that facility, such offender may be placed on a waiting list for that facility and returned to the court of original jurisdiction for further instructions or an alternative sanction.

(m) Food Service. The food preparation and dining area shall provide space for meal service based on the population size and need.

(1) Dietary Allowances. Meals shall be approved and reviewed annually by a registered dietician, licensed nutritionist, registered nurse with a minimum of a Bachelor of Science degree in nursing, physician assistant, or physician to ensure that the meals meet the nationally recommended allowances for basic nutrition.

(2) Special Diets. Each facility shall provide special diets as prescribed by appropriate medical or dental personnel.

(3) Food Service Management. Food service operations shall be supervised by a staff member who is experienced in institutional food preparation or mass food management. Food services staff, including residents assigned to work in the facility kitchen, shall meet all requirements established by the local health authorities.

(4) Exclusion as Discipline. The use of food as a disciplinary measure is prohibited.

(5) Meal Requirements. The CSCD director or facility director shall ensure that at least three (3) meals (including two (2) hot meals) are provided during each 24-hour period. Variations may be allowed based on weekend and holiday food service demands, or in the event of emergency or security situations, provided basic nutritional goals are met.

(n) Health Care.

(1) Access to Care.

(A) Residents shall have unimpeded access to health care and to a system for processing complaints regarding health care.

(B) The facility shall have a designated health authority with responsibility for health care pursuant to a written agreement, contract or job description. The health authority may be a physician, health administrator or health agency. In the event that the designated health authority is a free community health clinic (one which provides services to everyone in the community regardless of ability to pay), then the CCF is not required to enter into a written contract or agreement. A copy of the mission statement of the free community health clinic and a copy of the criteria for admission shall be on file in lieu of a contract between the two (2) agencies.

(C) Each CCF shall have a policy defining the level, if any, of financial responsibility to be incurred by the resident who receives the medical or dental services.

(2) Emergency Health Care.

(A) Twenty-four hour emergency health care shall be provided for residents, to include arrangements for the following:

(i) On site emergency first aid and crisis intervention;

(ii) Emergency evacuation of the resident from the facility;

(iii) Use of an emergency vehicle;

(iv) Use of one (1) or more designated hospital emergency rooms or other appropriate health facilities;

(v) Emergency on-call services from a physician, advanced practice nurse, or physician assistant, a dentist and a mental health professional when the emergency health facility is not located in a nearby community; and

(vi) Security procedures providing for the immediate transfer of residents, when appropriate.

(B) A training program for direct care personnel shall be established by a recognized health authority in cooperation with the facility director that includes the following:

(i) Signs, symptoms and action required in potential emergency situations;

(ii) Administration of first aid and cardiopulmonary resuscitation (CPR);

(iii) Methods of obtaining assistance;

(iv) Signs and symptoms of mental illness, retardation and chemical dependency; and

(v) Procedures for patient transfers to appropriate medical facilities or health-care providers.

(C) First aid kits shall be available in designated areas of the facility. Contents and locations shall be approved by the health authority.

(3) Health Screening and Medical Examinations. Medical, dental and mental health screening shall be performed by health-trained or qualified health-care personnel on all offenders within ten (10) days prior to or after admission to the facility. The purpose of the screening is to determine if the offender has any disease, illness or condition that precludes admission. The health screening shall include the following:

(A) Questionnaires for health screening shall be established to document inquiries into and observations of the following:

(i) Current illness and health problems, including venereal diseases and other infectious diseases;

(ii) Dental problems;

(iii) Mental health problems, including suicide attempts or ideation;

(iv) Use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use and a history of problems that may have occurred after ceasing use (for example, convulsions);

(v) Other health problems designated by the responsible health authority;

(vi) Tuberculosis (TB) screening of residents shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a CCF may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.

(B) Observation by qualified healthcare personnel of:

(i) Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor and sweating;

(ii) Body deformities, ease of movement and so forth; and

(iii) Conditions of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations and needle marks or other indications of drug abuse.

(C) Medical Examinations.

(i) A new resident admitted to the facility who was not transferred from a jail or other correctional facility shall have a medical history and physical examination completed within ten (10) days prior to or after admission to the facility.

(ii) TB screening of residents shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a residential facility may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.

(iii) Medical examinations shall be conducted for any employee or resident suspected of having a communicable disease.

(4) Serious and Infectious Diseases.

(A) The facility shall provide for the management of serious and infectious diseases.

(B) The CCFs shall have policies and procedures to direct actions to be taken by employees concerning residents who have been diagnosed with human immunodeficiency virus (HIV), including, at a minimum, the following:

(i) When and where residents shall be tested;

(ii) Appropriate safeguards for staff and residents;

(iii) Staff and resident training;

(iv) Issues of confidentiality; and

(v) Counseling and support services.

(5) Dental Care. Access to dental care shall be made available to each resident.

(6) Medications--General Guidelines.

(A) Staff who dispense medication shall be properly credentialed and trained. Staff that supervise self-administration of medication shall be appropriately trained to perform the task.

(B) Policy and procedure shall direct the possession and use of controlled substances, prescribed medications, supplies and over-the-counter (OTC) drugs. Prescribed medications shall be dispensed according to the directions of the prescribing physician, advanced practice nurse or physician assistant.

(C) Each residential facility shall have a written policy in place that sets forth required procedural guidelines for the administration, documentation, storage, management, accountability of all resident medication, inventory, disposal of medications, handling medication errors and adverse reactions.

(D) If medications are distributed by facility staff, records shall be maintained and audited monthly and shall include, but not be limited to the date, time, name of the resident receiving the medication and the name of the staff distributing the medication.

(E) Each facility shall ensure that the phone number of a pharmacy and a comprehensive drug reference source is readily available to the staff.

(7) Medication Storage.

(A) Prescription and OTC medications shall be kept in locked storage and accessible only to staff who are authorized to provide medication. Syringes, needles and other medical supplies shall also be kept in locked storage.

(B) All controlled/scheduled drugs shall be stored under double lock and key.

(C) Each facility shall ensure that all medications, syringes and needles are stored in the original container.

(D) Medications labeled as internal and external only shall not be stored together in the same medication box or medication drawer.

(E) Sample prescription medications provided by physicians shall be stored with proper labeling information that includes the name of the medication; name of the prescribing physician, advanced practice nurse or physician assistant; date prescribed; and dosage instructions.

(F) Medications that require refrigeration shall be stored in a refrigerator designated for medications only. A thermometer shall be maintained inside the refrigerator with the temperature checked and recorded daily on a temperature log.

(G) Medications that are discontinued, have expired dates or are no longer in use shall be stored in a separate locked container or drawer until destroyed.

(H) Facilities that allow residents to keep medications in the resident's possession shall have written guidelines specific for keep-on-person (KOP) medications. Staff shall ensure that authorized residents keep medication on their person or safely stored and inaccessible to other residents.

#### (8) Medication Inventory and Disposal.

(A) Facility staff shall conduct an inventory count of all controlled/scheduled prescription medications daily (at a minimum, once per 24 hour period). The count shall be conducted and witnessed by one (1) other staff member. Documentation of inventory counts shall be maintained for a minimum period of three (3) years.

(B) The facility shall conduct a monthly inventory of all prescription and OTC drugs provided to or purchased by the resident. The monthly audit shall be conducted by a staff person who is not responsible for conducting the daily inventory counts.

(C) A monthly audit shall be conducted of all medication administration records to verify the accuracy of recorded information. The monthly audit of medication administration records shall be conducted by a staff person who is not responsible for the documentation of medication administration records.

(D) When a discrepancy is noted between the medication administration record and the monthly inventory count, documentation explaining the reason for the discrepancy and action taken to correct it shall be recorded. In the event an inventory count reveals unaccounted for controlled/scheduled medication, an investigation shall be conducted and a summary report written detailing the steps taken to resolve the matter. Until the discrepancy is resolved, an inventory count shall be conducted three (3) times daily (after each shift). The summary report shall be maintained for a minimum period of three (3) years. If misapplication, misuse or misappropriation of controlled/scheduled medication leads to an investigation by law enforcement, such information shall be reported pursuant to subsection (i) of this rule.

(E) Discontinued and outdated medications shall be removed from the current medication storage, stored in a separate locked

container and disposed of within 30 days. The drugs designated for disposal shall be recorded on a drug disposal form.

(F) Methods used for drug disposal shall prevent medication from being retrieved, salvaged or used in any way. The disposal of drugs shall be conducted, documented and the process witnessed by one (1) other staff member. The documentation shall include:

(i) Name of the resident and date of disposal;

(ii) Name and strength of the medication;

(iii) Prescription number, sample or OTC lot numbers;

(iv) Amount disposed, reason for disposal and the method of disposal; and

(v) Signatures of the two (2) staff members that witnessed the disposal.

#### (9) Administration of Medication for Non-Medical Model Facilities.

(A) Prescription medications shall be dispensed only by licensed nurses or other staff who are trained and have the appropriate documented medication certification to dispense medications while under the supervision of a physician or registered nurse. Facilities that do not have licensed nurses or other credentialed staff to dispense medications (non-medical model facilities) shall implement the practice of self-administration of medications.

(B) If medications are dispensed through the practice of self-administration in a non-medical model program, staff trained by a qualified health professional to supervise residents in the self-administration of medications shall monitor the residents during the self-administration process.

(C) Each dose of prescription medication received by the resident shall be documented on the prescription medication administration record and maintained in the resident's medical file. The prescription medication record shall include:

(i) Name of the resident receiving the medication;

(ii) Drug allergies or the absence of known drug allergies;

(iii) Name, strength of medication and route of administration;

(iv) Instructions for taking the medication, the amount taken and the route of administration;

(v) Date and time the medication was provided;

(vi) Prescription number (or lot number for sample drugs) and the initial amount of medication received;

(vii) Prescribing physician, advanced practice nurse or physician assistant and the name of the pharmacy;

(viii) Signature of the resident receiving the medication and the staff person supervising the self-administration of medication;

(ix) The remaining amount of medication after each dose dispensed; and

(x) Comment section for recording a variance, discrepancy or change.

(D) Each dose of OTC medication received by the resident shall be documented on the OTC medication administration record and maintained in the resident's medical file. The OTC drugs pur-



chased by the resident or supplied for the resident in quantities larger than single dose packages shall be recorded on the OTC drug record. The OTC drug record shall include:

- (i) The resident's name;
- (ii) The name and strength of the medication dispensed;
- (iii) Drug allergies or the absence of known drug allergies;
- (iv) The dosage instructions and route of administration;
- (v) The initial amount received, OTC lot number and the expiration date;
- (vi) The date and time the medication was dispensed;
- (vii) The amount dispensed and the ending count after each dose;
- (viii) Comment section for recording reason for OTC drug or other notations; and
- (ix) The signature of the resident and the employee who supervised each dose dispensed.

(E) Facility Stock OTC Drugs. Multiple OTC stock drugs supplied in single dose packaging may be recorded on the same form. The medication drug record for facility stock OTC drugs shall include:

- (i) The resident's name;
- (ii) The name, strength and route of administration;
- (iii) Drug allergies or the absence of known drug allergies;
- (iv) The date, time, amount dispensed and the lot number on the container;
- (v) Comment section to record the reason the OTC drug was requested; and
- (vi) The signature of the resident and the employee who supervised each dose dispensed.

(10) Training for Monitoring Self-Administration of Medications. All residential employees responsible for supervising residents in self-administration of medication, who are not credentialed to dispense medication, shall complete required training before performing this task.

(A) The initial training for new employees shall be four (4) hours in length.

(B) Employees shall complete a minimum of two (2) hours of review training annually thereafter.

(C) The training shall be provided by a physician, pharmacist, physician assistant or registered nurse before supervising self-administration of medications. A licensed vocational nurse (LVN) or paramedic (under supervision) may teach the course from an established curriculum. Topics to be covered shall include:

- (i) Prescription labels;
- (ii) Medical abbreviations;
- (iii) Routes of administration;
- (iv) Use of drug reference materials;

(v) Monitoring/observing insulin preparation and administration;

(vi) Storage, maintenance, handling and destruction of medication;

(vii) Transferring information from prescription labels to the medication administration record and documentation requirements, including sample medications; and

(viii) Procedures for medication errors, adverse reactions and side effects.

(11) Female Residents. If female residents are housed, access to pregnancy management services shall be available.

(12) Mental Health. Access to mental health services shall be available to residents.

(13) Suicide Prevention. Each facility shall have a written suicide prevention and intervention program reviewed and approved by a qualified medical or mental health professional. All staff with resident supervision responsibilities shall be trained in the implementation of the suicide prevention program.

(14) Personnel.

(A) If treatment is provided to residents by health-care personnel other than a physician, psychiatrist, dentist, psychologist, optometrist, podiatrist or other independent provider, such treatment shall be performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.

(B) If the facility provides medical treatment, personnel who provide health-care services to residents shall be qualified and appropriately licensed. Verification of current credentials and job descriptions shall be on file in the facility. Appropriate state and federal licensure, certification or registration requirements and restrictions apply.

(15) Informed Consent. If the facility provides medical treatment, the facility shall ensure residents are provided information to make medical decisions with informed consent. All informed consent standards in the jurisdiction shall be observed and documented for resident care.

(16) Participation in Research. Residents shall not participate in medical, pharmaceutical or cosmetic experiments. This does not preclude individual treatment of a resident based on resident's need for a specific medical procedure that is not generally available.

(17) Notification. Individuals designated by the resident shall be notified in case of serious illness or injury.

(18) Health Records.

(A) If medical treatment is provided by the facility, accurate health records for residents shall be maintained separately and confidentially.

(B) If medical treatment is provided by the facility, the method of recording entries in the records, the form and format of the records, and the procedures for maintenance and safekeeping shall be approved by the health authority.

(C) If medical treatment is provided by the facility, for the residents being transferred to other facilities, summaries or copies of the medical history record shall be forwarded to the receiving facility prior to or at arrival.

(o) Discharge From Residential Facilities.

(1) Victim Notification. The CSCD director and facility director shall ensure there are procedures, policies and practices that comply with Texas Government Code §76.016, TCCP art. 42.21(a) and other applicable laws as to the notifications made to certain crime victims of offenders who are residents in its facilities or subject to its programs.

(2) Discharge. Discharge from residential facilities shall be based on the following criteria:

(A) The resident has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(B) The resident has satisfied a sentence of confinement;

(C) The resident has satisfied a period of placement as a condition of community supervision or satisfied the conditions of a pre-trial agreement signed by a judge presiding over an established drug court;

(D) The resident has demonstrated non-compliance with program criteria or court order;

(E) The resident manifests a non-emergency medical problem that prohibits participation and/or completion of the residential program requirements;

(F) The resident displays symptoms of a psychological disorder that prohibits participation and/or completion of the residential program requirements; or

(G) The resident is identified as inappropriate or ineligible for participation in the residential program as defined by facility eligibility criteria, statute or standard.

(3) Discharge Report. The CSCD director and facility director shall ensure a report is prepared at the termination of program participation that reviews the resident's performance. A copy of the report shall be provided to the receiving CSCD community supervision officer (CSO).

(p) Basic Services and Programs.

(1) Each facility shall, at a minimum, provide programs in the following areas which shall include, but not be limited to:

(A) Education programs;

(B) Rehabilitation programs based on the mission of the facility;

(C) Community service restitution/work detail;

(D) Recreational programs; and

(E) Cognitive based programs.

(2) Facilities serving other jurisdictions shall have a procedure in place designed to assist the resident in obtaining employment in the jurisdiction to which the resident will be released. At a minimum, an aftercare/supervision plan shall be provided to the original jurisdiction and shall outline aftercare/supervision strategies best designed to sustain progress.

(3) Each facility shall have a family support program designed to educate family members in the goals of the facility and resident, as well as to incorporate family assistance during and after residency.

(4) Each facility incorporating an employment component shall provide an initial programming phase of not less than 30 days prior to work release. A longer period of programming shall be pro-

vided depending upon documented risk/needs assessment and/or program progress.

(q) Mail, Telephone and Visitation. The CSCD director and facility director shall have written policies which govern the facility's mail, telephone and visitation privileges for residents, including mail inspection, public phone use and routine and special visits. The policies shall address compelling circumstances in which a resident's mail both incoming and outgoing may be opened, but not read, to inspect for contraband.

(r) Religious Programs.

(1) The CSCD director and facility director shall have written policies that govern religious programs for residents. The policies shall provide that residents have the opportunity to voluntarily practice the requirements of a resident's religious faith, have access to worship/religious services and the use or contact with community religious resources, when appropriate.

(2) Under Texas Civil Practice & Remedies Code, Chapter 110, a CSCD or CCF may not substantially burden a resident's free exercise of religion except with the least restrictive measures in furtherance of a compelling interest. Pursuant to Texas Government Code §76.018, there is a presumption that a policy or practice that applies to a resident in the custody of a CCF is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the resident.

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

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Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 421. STANDARDS FOR CERTIFICATION

#### 37 TAC §421.5

The Texas Commission on Fire Protection (the Commission) adopts amendments to §421.5, Definitions. The amendments to §421.5 are adopted with changes to the proposed text published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8430) and will be republished.

The adopted amendment allows the Commission to accept college courses from an institution that has been accredited by a nationally recognized accrediting agency as approved by the U. S. Secretary of Education. It also includes already existing text for Definitions (paragraphs (12) - (43)) that was inadvertently left out of the proposed rule in November.

No comments were received from the public regarding the proposed amendments.

This amendment is adopted under §419.028 of the Texas Government Code.

*§421.5. Definitions.*

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

(1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the Commission. The types of appointments are:

(A) permanent appointment--The designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, §419.032); and

(B) probationary or temporary appointment--The designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the Commission's certification and has met the medical requirement of §423.1(b) of this title, if applicable, but has not yet been certified. (See Texas Government Code, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the Commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the Commission and contain all information requested by the Commission. The Commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the Texas Commission on Fire Protection certification and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter--A volunteer fire fighter.

(7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.

(9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(10) Code--The official legislation creating the Commission.

(11) College credits--Credits earned for studies satisfactorily completed at an institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or

courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification.

(12) Commission--Texas Commission on Fire Protection.

(13) Commission-recognized training--A curriculum or training program which carries written approval from the Commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(15) Expired--Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter--A person as defined in the Texas Government Code, §419.084(h).

(17) Fire chief--The head of a fire department.

(18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.

(19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(20) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(21) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(22) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(23) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(24) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(25) Incipient stage fire--a fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(26) Interior structural fire fighting--the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155)

(27) Lead instructor--An individual qualified as an instructor to deliver fire protection training.

(28) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as herein defined.

(29) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).

(30) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(31) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(32) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(33) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(34) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982, and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(35) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) levee improvement district;
- (F) drainage district;
- (G) irrigation district;
- (H) water improvement district;
- (I) water control and improvement district;
- (J) water control and preservation district;
- (K) freshwater supply district;
- (L) navigation district;
- (M) conservation and reclamation district;
- (N) soil conservation district;
- (O) communication district;
- (P) public health district;
- (Q) river authority;

(R) municipal utility district;

(S) transit authority;

(T) hospital district;

(U) emergency services district;

(V) rural fire prevention district; and

(W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(36) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for TCFP certification which must be issued from another jurisdiction and which may only be used for obtaining initial certification.

(37) Recognition of training--A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(38) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(39) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(40) Trainee--An individual who is participating in a Commission approved training program.

(41) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(42) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the Texas Commission on Fire Protection.

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant

(ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

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

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Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
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For further information, please call: (512) 936-3813



## CHAPTER 423. FIRE SUPPRESSION

### SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

#### 37 TAC §423.13

The Texas Commission on Fire Protection (the Commission) adopts amendments to §423.13, International Fire Service Accreditation Congress (IFSAC) Seal. The amendments to §423.13 are adopted without changes to the proposed text published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8714) and will not be republished.

The adopted amendments remove redundant information.

No comments were received from the public regarding the proposed amendments.

This amendment is adopted under §419.008 of the Texas Government 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.

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## CHAPTER 427. TRAINING FACILITY CERTIFICATION

### SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

#### 37 TAC §427.1

The Texas Commission on Fire Protection (the Commission) adopts amendments to §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel. The amendment to §427.1 is adopted without changes to the proposed text published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8431) and will not be republished.

The adopted amendment requires all certified training providers to submit in writing all requests to provide certification training and all requests for course deviations.

No comments were received from the public regarding the proposed amendments.

This amendment is adopted under §419.0341 of the Texas Government 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.

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## CHAPTER 431. FIRE INVESTIGATION

### SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

#### 37 TAC §431.3

The Texas Commission on Fire Protection (the Commission) adopts amendments to §431.3, Minimum Standards for Basic Arson Investigator Certification. The amendments are adopted with changes to the proposed text published in the November

23, 2007, issue of the *Texas Register* (32 TexReg 8431) and will be republished.

The amendments to §431.3 is adopted to clarify that successful completion of a National Fire Academy program for fire investigation must include the basic course, Fire Arson Investigation and two of the four additional courses listed under subsection (a)(4)(B).

These adopted amendments clarify the Commission's minimum standards for certification as a basic arson investigator.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under §419.008 of the Texas Government Code.

*§431.3. Minimum Standards for Basic Arson Investigator Certification.*

(a) In order to be certified by the commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;

(2) hold a current commission as a peace officer with the employing entity for which the arson investigations will be done; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator; or

(4) complete a commission approved basic fire investigation training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire investigation training program shall consist of one of the following:

(A) completion of the commission approved Fire Investigator Curriculum, as specified in Chapter 5 of the commission's Certification Curriculum Manual;

(B) successful completion of a National Fire Academy program for fire investigation. The program must include the basic course, Fire Arson Investigation, and two of the following courses or their predecessor:

(i) Arson Detection;

(ii) Fire Cause Determination for Company Officers;

(iii) Initial Fire Investigation; or

(iv) Management of Arson Prevention and Control.

(C) successful completion of an out-of-state or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Fire Investigator Curriculum as specified in Chapter 5 of the commission's Certification Curriculum Manual; or

(D) successful completion of the following college courses: Arson Investigator, 3 semester hours; Hazardous Materials, 3 semester hours; Building Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12. The three semester hour course "Building Codes and Construction" may be substituted for Building Construction. Arson Investigator I or II may be used to satisfy the requirements of Arson Investigation. Hazardous

Materials I or II may be used to satisfy the requirements of Hazardous Materials.

(b) A person who holds or is eligible to hold a certificate upon employment as a part-time arson investigator may be certified as an arson investigator, of the same level of certification, without meeting the applicable examination requirements.

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

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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Proposal publication date: November 23, 2007

For further information, please call: (512) 936-3813



## CHAPTER 437. FEES

### 37 TAC §437.15

The Texas Commission on Fire Protection (the Commission) adopts an amendment to §437.15, International Fire Service Accreditation Congress (IFSAC) Seal Fees. The amendment to §437.15 is adopted without changes to the proposed text published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8432) and will not be republished.

The adopted amendment is to increase the fee to cover the cost of processing the application.

No comments were received from the public regarding the proposed amendments.

This amendment is adopted under §419.026 of the Texas Government 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.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

## CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§92.10, 92.15, 92.20, and 92.51 in Chapter 92, Licensing Standards for Assisted Living Facilities. The amendments to §§92.15, 92.20, and 92.51 are adopted with changes to the proposed text published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7433). The amendment to §92.10 is adopted without changes to the proposed text.

The amendments are adopted to implement portions of Senate Bill (SB) 1318, 80th Legislature, Regular Session, 2007. Senate Bill 1318, in part, amended Texas Health and Safety Code, §247.023 to provide that a license DADS issues to an assisted living facility is valid for two years; to allow the HHSC executive commissioner, on behalf of DADS, to adopt a system under which a license expires on various dates during the two-year period; and to prorate the license fee for the year in which a license expiration date is changed. The adopted amendments revise references from a one-year license to a two-year license and establish a staggered system of license renewals and prorated license fees, including renewals and fees for the licensing of Alzheimer's facilities, for the first two years in which the rules are in effect.

Senate Bill 1318 also amended Texas Health and Safety Code, §247.024, to raise the maximum amount of a license fee to \$1,500. The adopted amendments set new license fees to accommodate the new two-year license period and change the maximum license fee from \$750 to \$1,500.

DADS received no comments regarding adoption of the amendments. However, DADS changed §§92.15(b)(1), 92.20(b), and 92.51(f)(1) to replace the phrase ". . . after the effective date of this section . . ." with ". . . beginning September 1, 2008, . . ." to provide a specific date on which the two-year time frame for the staggered system of license renewals and prorated license fees begins.

### SUBCHAPTER B. APPLICATION PROCEDURES

#### 40 TAC §§92.10, 92.15, 92.20

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

#### §92.15. *Renewal Procedures and Qualifications.*

(a) Each license issued under this chapter must be renewed before the license expiration date. Each license expires two years from the date issued, except as provided by subsection (b)(1) of this section. A license issued under this chapter is not automatically renewed.

(b) A facility must submit an application for license renewal and a renewal license will be valid as follows:

(1) For two years beginning September 1, 2008, a facility with a facility identification number that ends in an odd number (1, 3, 5, 7, or 9) must submit an application to renew its license before the expiration date on the license in accordance with this section. The facility's first renewal license issued beginning September 1, 2008, is valid for one year, and subsequent renewal licenses are valid for two years.

(2) A facility with a facility identification number that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its license before the expiration date on the license in accordance with this section. The facility's renewal licenses are valid for two years.

(c) Each license holder must, at least 45 days before the expiration of the current license, file an application for renewal with DADS. DADS considers that an individual has filed a timely and sufficient application for the renewal of a license if the license holder submits:

(1) a complete application to DADS, and DADS receives the complete application at least 45 days before the current license expires;

(2) an incomplete application to DADS with a letter explaining the circumstances that prevented the inclusion of the missing information, and DADS receives the incomplete application and letter at least 45 days before the current license expires; or

(3) a complete application to DADS, DADS receives the application during the 45-day period ending on the date the current license expires, and the license holder pays a fine under the administrative penalties described in Subchapter H, Division 9 of this chapter (relating to Administrative Penalties).

(d) If the application is postmarked by the filing deadline, the application is considered to be timely filed if received in DADS' Licensing and Credentialing Section, Regulatory Services Division, within 15 days after the date of the postmark, or within 30 days after the date of the postmark and the license holder proves to the satisfaction of DADS that the delay was due to the shipper. It is the license holder's responsibility to ensure that the application is timely received by DADS.

(e) Failure to file a timely and sufficient application will result in the expiration of the license.

(f) The application for renewal must contain:

(1) information as required by §92.12 of this chapter (relating to Applicant Disclosure Requirements);

(2) the license fee as described in §92.20 of this subchapter (relating to License Fees); and

(3) if applicable under subsection (h)(2) of this section, a copy of the license holder's required accreditation report to the accreditation commission.

(g) The renewal of a license may be denied for the same reasons an original application for a license may be denied (see §92.17 of this chapter (relating to Criteria for Denying a License or Renewal of a License)).

(h) A license holder applying for license renewal must affirmatively show that the facility meets:

(1) DADS licensing standards based on an on-site survey by DADS, which must include an observation of the care of a resident; or

(2) the standards required for accreditation based on an on-site accreditation survey by the accreditation commission.

(i) A license holder applying for license renewal that chooses the option allowed in subsection (h)(2) of this section must contact DADS to determine which accreditation commissions are available to meet the requirements of subsection (h)(2) of this section.

§92.20. *License Fees.*

(a) Basic fees.

(1) Type A, Type B, and Type E. The license fee is \$200 plus \$10 for each bed for which a license is sought, with a maximum of \$1,500. The license fee for a one-year license issued in accordance with §92.15(b)(1) of this subchapter (relating to Renewal Procedures and Qualifications) is \$100 plus \$5 for each bed for which a license is sought, with a maximum of \$750. The fee must be paid with each initial application and with each renewal application.

(2) Type C. The license fee is \$100. The license fee for a one-year license issued in accordance with §92.15(b)(1) of this subchapter is \$50. The fee must be paid with each initial application and with each renewal application.

(3) Provisional license. The license fee is \$75, plus \$5 for each bed for which a license is sought, with a maximum of \$750.

(4) Increase in beds. An approved increase in beds is subject to an additional fee of \$10 for each bed.

(b) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter C of this chapter (relating to Standards for Licensure) must pay an additional license fee. The additional fee is \$200, except the additional fee for a facility renewing its Alzheimer's certification in accordance with §92.51(f)(1) of this chapter (relating to Licensure of Facilities for Persons with Alzheimer's Disease) is \$100 for the first renewal beginning September 1, 2008.

(c) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the Department of Aging and Disability Services (DADS) has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D, and Chapter 247, §247.003(b).

(2) DADS charges and collects an annual fee from each institution licensed under Health and Safety Code, Chapter 247, each calendar year if the amount of the assisted living trust fund is less than \$500,000. The fee is deposited to the credit of the assisted living facility trust fund. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, and is in an amount sufficient to provide not more than \$500,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(3) DADS may charge and collect a trust fund fee more than once a year only if necessary to ensure that the amount in the assisted living trust fund is sufficient to make the disbursements required under Health and Safety Code, §242.0965.

(4) Failure to pay the trust fund fee within 90 days from the date assessed by DADS may result in an assessment of an administrative penalty under the administrative penalties described in Subchapter H, Division 9 of this chapter (relating to Administrative Penalties).

(d) Fees for plan reviews.

(1) DADS charges a fee to review plans for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities.

(2) The fee schedule is as follows.

(A) New small Type A (4 to 16 beds based on residential board and care occupancy of the Life Safety Code, Chapter 21-2 Slow):

(i) Single story--\$900;

(ii) Multiple story--\$1,100; and

(iii) Additions or remodeling--2% of construction cost with a \$350 minimum fee and a maximum of 50% of the plan review fee for a new facility of the same type.

(B) New large Type A (17 or more beds based on residential board and care of the Life Safety Code, Chapter 21-3):

(i) Single story:

(I) facilities with 17-80 beds--\$1,100;

(II) facilities with 81-120 beds--1,650; and

(III) facilities with 121+ beds--\$14 per bed.

(ii) Multiple story:

(I) facilities with 17-80 beds--\$1,650;

(II) facilities with 81-120 beds--\$2,150; and

(III) facilities with 121+ beds--\$18 per bed.

(iii) Additions or remodeling--2% of construction cost with a \$400 minimum fee and a maximum of 50% of the plan review fee for a new facility of the same type.

(C) New small Type B (4 to 16 beds based on residential board and care occupancy of the Life Safety Code, Chapter 21-2 Impractical):

(i) Single story--\$1,100;

(ii) Multiple story--\$1,650;

(iii) Additions or remodeling--2% of construction cost with a \$350 minimum fee and a maximum of 50% of the plan review fee for a new facility of the same type; and

(iv) Alzheimer's certification--\$350 (in addition to above fees).

(D) New large Type B (17 or more beds based on the health care occupancy of the Life Safety Code, Chapter 12):

(i) Single story:

(I) facilities with 17-80 beds--\$1,600;

(II) facilities with 81-120 beds--\$2,150;

(III) facilities with 121+ beds--\$18 per bed;

(ii) Multiple story:

(I) facilities with 17-80 beds--\$2,100;

(II) facilities with 81-120 beds--\$2,650;

(III) facilities with 121+ beds--\$22 per bed;

(iii) Additions or remodeling--2% of construction cost with \$500 minimum fee and a maximum of 50% of the plan review fee for a new facility of the same type; and

(iv) Alzheimer's certification--\$550 (in addition to the fees specified in clauses (i) - (iii) of this subparagraph).

(e) Payment of fees. Payment of fees must be by check, cashier's check, or money order made payable to the Department of



Aging and Disability Services. All fees are nonrefundable, except as provided by the Texas Government Code, Chapter 2005.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER C. STANDARDS FOR LICENSURE

### 40 TAC §92.51

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

#### §92.51. *Licensure of Facilities for Persons with Alzheimer's Disease.*

(a) Any facility which advertises, markets, or otherwise promotes that the facility or a distinct part of the facility provides specialized care for persons with Alzheimer's disease or related disorders must be certified under this subchapter. Use of advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness" will not trigger a requirement for certification as an Alzheimer's facility.

(b) The facility must be licensed as a Type B facility.

(c) Application for certification must be made on forms prescribed by DADS and must include:

(1) the fee as described in §92.20(b) of this chapter (relating to License Fees); and

(2) a disclosure statement, using DADS' form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, which includes the pre-admission process, the admission process, discharge and transfer, planning and implementation of care, change in condition issues, staff training on dementia care, the physical environment, and staffing. The disclosure statement must be updated and submitted to DADS as needed to reflect changes in special services for residents with Alzheimer's disease or related disorders.

(d) The facility must not exceed the maximum number of residents specified on the certificate.

(e) A certificate must be posted in a prominent location for public view.

(f) A certificate is valid for two years from the effective date of approval by DADS, except as provided in paragraph (1) of this subsection.

(1) For two years beginning September 1, 2008, an Alzheimer's facility with a facility identification number that ends in an odd number (1, 3, 5, 7, or 9) must submit an application to renew its certification as an Alzheimer's facility in accordance with this section. The facility's first renewal certificate issued beginning September 1, 2008, is valid for one year, and subsequent renewal certificates are valid for two years.

(2) An Alzheimer's facility with a facility identification number that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its certification as an Alzheimer's facility in accordance with this section. The facility's renewal certificates are valid for two years.

(g) A certificate will be cancelled upon change of ownership and if DADS finds that the certified unit or facility is not in compliance with applicable laws and rules. A facility must remove a cancelled certificate from display and advertising, and the certificate must be surrendered to DADS upon request.

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

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## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§97.2, 97.244, 97.256, 97.292, 97.295, 97.298, 97.299, 97.301, 97.403 - 97.405, and 97.602; new §97.259 and §97.260; and the repeal of §97.259, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies. The amendments to §§97.2, 97.256, and 97.405 are adopted with changes to the proposed text published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7437). The amendments to §§97.244, 97.292, 97.295, 97.298, 97.299, 97.301, 97.403, 97.404, and 97.602; new §97.259 and §97.260; and the repeal of §97.259 are adopted without changes to the proposed text.

The amendments are adopted to clearly specify the requirements for licensed home and community support services agencies and hospice facilities to develop, maintain, and implement a comprehensive emergency preparedness and response plan. The adoption addresses the health and safety needs of

clients who reside in a residence and clients admitted to or residing in a hospice facility during a disaster.

The adopted amendments on emergency planning conform with the recommendations of DADS' Emergency Task Force; the Governor's Task Force on Evacuation, Transportation, and Logistics; a written report from the United States Government Accountability Office on disaster preparedness for vulnerable populations; and current guidance from the Centers for Medicare and Medicaid Services on emergency preparedness. The recommendations were made in response to the lessons learned by federal, state, and local governments from the devastating hurricane season of 2005 in an effort to improve public health emergency preparedness and response.

The amendments are also adopted in response to Executive Order RP57, issued by the Governor of the State of Texas on March 21, 2006. This order directed coordination among DADS and other state entities to ensure the safe and efficient evacuation of Texans with special needs in the event of a disaster. This includes developing criteria for evacuation plans for all special needs facilities and ensuring that local jurisdictions approve evacuation plans maintained by special needs facilities.

The adoption of new §97.259 ensures that any initial training obtained prior to designation is obtained within the 12 months immediately preceding the date of designation to the position, allows a person to obtain the additional 16 hours of training prior to the date of designation, and adds that any of the additional 16 hours of initial training not on topics specified in this section may include other subjects related to the duties of an administrator.

The adoption of new §97.260 adds documentation requirements for continuing education and adds that any of the 12 hours of continuing education that are not on topics specified in this section may include other subjects related to the duties of an administrator.

Five minor editorial changes were made to the texts of §§97.2, 97.256, and 97.405 to clarify and improve the accuracy of the sections.

DADS received a written comment from the Coalition for Nurses in Advanced Practice (CNAP). A summary of the comment and the response follow.

Comment: Since the word "practitioner" is defined in the Texas State Board of Pharmacy Rules in 22 TAC §291.31 (relating to definitions) as including physicians and advanced practice nurses as practitioners who may prescribe medications, biologicals, and medical devices, CNAP recommended changing the word "physician" in §97.405(y)(1) to "practitioner." They also noted that "practitioner" is also defined in §97.2(76) of this chapter.

Response: The agency agrees that a physician's duties, including those referenced in §97.405(y)(1), may be delegated in accordance with applicable state law, including Chapter 157 of the Occupations Code. However, the agency prefers to make such a clarifying change when it can make similar changes to other sections in the chapter at the same time. Therefore, the agency declines to make the suggested change at this time.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §97.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

#### §97.2. Definitions.

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

(1) Accessible and flexible services--Services which are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for the day-to-day operations of an agency.

(5) Advanced practice nurse--A registered nurse who is approved by the Texas Board of Nursing to practice as an advanced practice nurse and who maintains compliance with the applicable rules of the Texas Board of Nursing. See the Texas Board of Nursing's definition of advanced practice nurse in 22 TAC §221.1 (concerning definitions).

(6) Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(7) Affiliate--With respect to an applicant or license holder, which is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0%.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(8) Agency--A home and community support services agency.

(9) Alternate delivery site--A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business. For the purposes of this definition, the hospice's principal place of business is the parent office for the hospice;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(10) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(11) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(12) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(13) Audiologist--A person who is currently licensed under the Occupations Code, Chapter 401, as an audiologist.

(14) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(15) Bereavement services--Support services offered to a family during bereavement. Family includes a significant other(s).

(16) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(17) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(18) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated

effectively and support the objectives outlined in the plan of care or care plan.

(19) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(20) Certified home health services--Home health services that are provided by a certified agency.

(21) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(22) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (e.g., vaccine) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(23) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(24) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(25) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(26) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(27) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(28) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(29) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(30) DADS--Department of Aging and Disability Services.

(31) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes week-ends and holidays.

(32) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(33) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(34) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(35) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(36) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a freestanding hospice, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(37) End stage renal disease (ESRD)--For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(38) Freestanding hospice--An agency that provides hospice services to clients of the agency who are residing at the agency's physical location including inpatient and respite care.

(39) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(40) Health assessment--A determination of a client's physical and mental status through inventory of systems.

(41) Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(42) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(43) Home health medication aide--A person permitted under the Health and Safety Code, Chapter 142, Subchapter B.

(44) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(45) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(46) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(47) Independent living environment--A client's residence, which may include a group home or foster home, or other settings where a client participates in activities, including school, work, or church.

(48) Individual/family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(49) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(50) Inpatient unit--A facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(51) IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.

(52) JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(53) Licensed vocational nurse--A person who is currently licensed under Occupations Code, Chapter 301, as a licensed vocational nurse.

(54) Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(55) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(56) Medication administration record--A record used to document the administration of a client's medications.

(57) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(58) Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(59) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(60) Nursing facility--An institution licensed as a nursing home under the Health and Safety Code, Chapter 242.

(61) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(62) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Occupations Code, Chapter 454, as an occupational therapist.

(63) Original active client record--A record composed first-hand for a client currently receiving services.

(64) Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(65) Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(66) Parent company--A person, other than an individual, who has a direct 100% ownership interest in the owner of an agency.

(67) Person--An individual, corporation, or association.

(68) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(69) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(70) Physical therapist--A person who is currently licensed under Occupations Code, Chapter 453, as a physical therapist.

(71) Physician--A person who holds a doctor of medicine or doctor of osteopathy degree and is currently licensed and practicing medicine under the laws of the state of Texas, Oklahoma, New Mexico, Arkansas, or Louisiana.

(72) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Occupations Code, Chapter 204, as a physician assistant.

(73) Physician-delegated task--A task performed in accordance with the Occupations Code, Chapter 157, including orders

signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(74) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(75) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(76) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(77) Preparedness--Actions taken in anticipation of a disaster.

(78) Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(79) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(80) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(81) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(82) Registered nurse (RN)--A person who is currently licensed under the Nursing Practice Act, Occupations Code, Chapter 301, as a registered nurse.

(83) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC, Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(84) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(85) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Health and Safety Code, Chapter 142.

(86) Respiratory therapist--A person who is currently licensed under Occupations Code, Chapter 604, as a respiratory care practitioner.

(87) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(88) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(89) Section--A reference to a specific rule in this chapter.

(90) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(91) Skilled services--Services in accordance with a plan of care that require the skills of:

(A) a registered nurse;

(B) a licensed vocational nurse;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(92) Social worker--A person who is currently licensed as a social worker under Occupations Code, Chapter 505.

(93) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Occupations Code, Chapter 401.

(94) Statute--The Health and Safety Code, Chapter 142.

(95) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(96) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(97) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(98) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(99) Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(100) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(101) Unlicensed person--An individual who is not licensed as a health care professional. The term includes home health aides, medication aides permitted by DADS, and other individuals providing personal care or assistance in health services.

(102) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(103) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(104) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(105) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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

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## SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

### DIVISION 3. AGENCY ADMINISTRATION

#### 40 TAC §§97.244, 97.256, 97.259, 97.260

The amendments and new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

#### §97.256. *Emergency Preparedness Planning and Implementation.*

An agency must have a written emergency preparedness and response plan, based on its risk assessment required by paragraph (1)(D) of this section, that comprehensively describes its approach to a disaster that could affect the need for its services or its ability to provide those services. An agency must maintain documentation of compliance with this section. With the exception of a freestanding hospice, DADS does not require an agency to physically evacuate or transport a client.

(1) An agency must take the following action to develop, maintain, and implement an emergency preparedness and response plan:

(A) An agency must involve the administrator, supervising nurse if applicable, and, based on the agency's organizational chart, other agency leaders designated by the administrator.

(B) An agency must designate an employee by title, and at least one alternate by title, to act as the agency's disaster coordinator.

(C) An agency must develop a continuity of operations business plan to address emergency financial needs, essential functions for client services, critical personnel, and how to return to normal operations as quickly as possible.

(D) An agency must include a risk assessment to identify the potential disasters from natural and man-made causes most likely to occur in the agency's service area.

(E) An agency must describe the actions and responsibilities for agency staff in each phase of emergency planning, including mitigation, preparedness, response, and recovery. In the response and recovery phases, include actions and responsibilities when warning of an emergency is not provided.

(F) An agency must develop a plan to monitor disaster-related news and information, including after hours, weekends, and holidays, to receive warnings of imminent and occurring disasters.

(G) An agency must describe the following for the response and recovery phases of the plan:

(i) who at the agency will initiate each phase;

(ii) procedures for communicating with:

(I) staff;

(II) clients or someone responsible for a client's emergency response plan;

(III) local, state, and federal emergency management agencies; and

(IV) other entities as applicable, including:

(-a-) DADS;

(-b-) emergency medical services; and

(-c-) other healthcare providers and suppliers; and

(iii) a primary mode of communication and alternate communication or alert systems in the event of telephone or power failure.

(H) An agency must provide the following information and discuss it with each client as part of the agency's written client care policies on how to handle emergencies in the home related to a disaster:

(i) the actions and responsibilities of agency staff during and immediately following an emergency;

(ii) the client's responsibilities in the agency's emergency preparedness and response plan in accordance with §97.282 of this chapter (relating to Client Conduct and Responsibility and Client Rights);

(iii) a list of community disaster resources that can assist a client during a disaster-related emergency, such as those provided by DADS and local, state, and federal emergency management agencies, including the special needs registry maintained by the state; and

(iv) materials that describe survival tips and plans for evacuation and sheltering in place.

(I) An agency must develop procedures in accordance with §97.301(a)(2) of this chapter (relating to Client Records) to release

client information as allowed by law in the event of a disaster-related emergency.

(J) An agency must develop procedures to triage clients that allow the agency to:

(i) categorize clients into groups based on the following:

(I) the services provided by the agency;

(II) the need for continuity of services provided by the agency; and

(III) the availability of someone to assume responsibility for a client's emergency response plan if needed by the client;

(ii) identify a client who may need evacuation assistance from local or state jurisdictions;

(iii) readily access recorded information about a client's triage category in the event of an emergency to coordinate and communicate as required by subparagraph (G) of this paragraph to implement the agency's response and recovery phases.

(K) An agency must develop and implement procedures as part of the agency's staffing policies to orient and train employees, volunteers, and contractors about their responsibilities in the agency's emergency preparedness and response plan.

(L) An agency must complete an internal review of the plan at least annually, and after each actual emergency response, to evaluate its effectiveness and to update the plan as needed.

(M) As part of the annual internal review, an agency must test the response phase of the emergency preparedness and response plan in a planned drill if not tested during an actual emergency response. Except for a freestanding hospice, a planned drill can be limited to the agency's procedures for communicating with staff.

(2) An agency must make a good faith effort to comply with the requirements of this section during a disaster. If the agency is unable to comply with any of the requirements of this section, it must document in the agency's records attempts of staff to follow procedures outlined in the agency's emergency preparedness and response plan.

(3) An agency is not required to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services, such as when roads are impassable or when a client relocates to a place unknown to the agency. An agency may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for the agency to reach its clients.

(4) If written records are damaged during a disaster, the agency must not reproduce or recreate client records except from existing electronic records. Records reproduced from existing electronic records must include:

(A) the date the record was reproduced;

(B) the agency staff member who reproduced the record; and

(C) how the original record was damaged.

(5) Notwithstanding the provisions specified in Division 2 of this subchapter (relating to Conditions of a License), an agency must notify and provide the following information to the DADS Home and Community Support Services Agencies licensing unit no later than five working days after any of the following temporary changes resulting from the effects of an emergency or disaster. The notice and informa-

tion must be submitted by fax or e-mail. If fax and e-mail are unavailable, notifications can be provided by telephone, but must be provided in writing as soon as possible. If communication with the DADS licensing unit is not possible, an agency may fax, e-mail, or telephone the designated survey office to provide notification.

(A) If temporarily relocating a place of business, the agency must provide DADS with:

(i) the license number for the place of business and the date of temporary relocation;

(ii) the physical address and phone number of the temporary location; and

(iii) the date an agency returns to a place of business after temporary relocation.

(B) If temporarily expanding the service area to provide services during a disaster, the agency must provide DADS with:

(i) the license number and revised boundaries of the original service area;

(ii) the date of temporary expansion; and

(iii) the date an agency's temporary expansion of its service area ends.

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

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#### 40 TAC §97.259

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

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## DIVISION 4. PROVISION AND COORDINATION OF TREATMENT AND SERVICES

### 40 TAC §§97.292, 97.295, 97.298, 97.299, 97.301

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

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## SUBCHAPTER D. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

### 40 TAC §§97.403 - 97.405

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142,

which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

*§97.405. Standards Specific to Agencies Licensed to Provide Home Dialysis Services.*

(a) License designation. An agency may not provide peritoneal dialysis or hemodialysis services in a client's residence, independent living environment, or other appropriate location unless the agency holds a license to provide licensed home health or licensed and certified home health services and designated to provide home dialysis services. In order to receive a home dialysis designation, the agency must meet the licensing standards specified in this section and the standards for home health services in accordance with Subchapter C of this title (relating to Minimum Standards for All Home and Community Support Services Agencies) and §97.401 of this title (relating to Standards Specific to Licensed Home Health Services) except for §97.401(b)(2)(A) and (B) of this title (relating to Standards Specific to Licensed Home Health Services). If there is a conflict between the standards specified in this section and those specified in Subchapter C of this title (relating to Minimum Standards for All Home and Community Support Services Agencies) §97.401 of this title (relating to Standards Specific to Licensed Home Health Services), the standards specified in this section will apply to the home dialysis services.

(b) Governing body. An agency must have a governing body. The governing body must appoint a medical director and the physicians who are on the agency's medical staff. The governing body must annually approve the medical staff policies and procedures. The governing body on a biannual basis must review and consider for approval continuing privileges of the agency's medical staff. The minutes from the governing body of the agency must be on file in the agency office.

(c) Qualifications and responsibilities of the medical director.

(1) Qualifications. The medical director must be a physician licensed in the State of Texas who:

(A) is eligible for certification or is certified in nephrology or pediatric nephrology by a professional board; or

(B) during the five-year period prior to September 1, 1996, served at least 12 months as director of a dialysis facility or program.

(2) Responsibilities. The medical director must:

(A) participate in the selection of a suitable treatment modality for all clients;

(B) assure adequate training of nurses in dialysis techniques;

(C) assure adequate monitoring of the client and the dialysis process; and

(D) assure the development and availability of a client care policy and procedures manual and its implementation.

(d) Personnel files. An agency must have individual personnel files on all physicians, including the medical director. The file must include the following:

(1) a curriculum vitae which documents undergraduate, medical school, and all pertinent post graduate training; and

(2) evidence of current licensure, and evidence of current United States Drug Enforcement Administration certification, Texas Department of Public Safety registration, and the board eligibility or

certification, or the experience or training described in subsection (c)(1) of this section.

(e) Provision of services. An agency that provides home staff-assisted dialysis must, at a minimum, provide nursing services, nutritional counseling, and medical social service. These services must be provided as necessary and as appropriate at the client's home, by telephone, or by a client's visit to a licensed ESRD facility in accordance with this subsection. The use of dialysis technicians in home dialysis is prohibited.

(1) Nursing services.

(A) A registered nurse (RN), licensed by the State of Texas, who has at least 18 months experience in hemodialysis obtained within the last 24 months and has successfully completed the orientation and skills education described in subsection (f) of this section, must be available whenever dialysis treatments are in progress in a client's home. The agency administrator must designate a qualified alternate to this registered nurse.

(B) Dialysis services must be supervised by an RN who meets the qualifications for a supervising nurse as set out in §97.244(c)(2) of this title (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications).

(C) Dialysis services must be provided by a qualified licensed nurse who:

(i) is licensed as a registered or licensed vocational nurse by the State of Texas;

(ii) has at least 18 months experience in hemodialysis obtained within the last 24 months; and

(iii) has successfully completed the orientation and skills education described in subsection (f) of this section.

(2) Nutritional counseling. A dietitian who meets the qualifications of this paragraph must be employed by or under contract with the agency to provide services. A qualified dietitian must meet the definition of dietitian in §97.2 of this chapter (relating to Definitions) and have at least one year of experience in clinical nutrition after obtaining eligibility for registration by the American Dietetic Association, Commission on Dietetic Registration.

(3) Medical social services. A social worker who meets the qualifications established in this paragraph must be employed by or be under contract with the agency to provide services. A qualified social worker is a person who:

(A) is currently licensed under the laws of the State of Texas as a social worker and has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has served for at least two years as a social worker, one year of which was in a dialysis facility or program prior to September 1, 1976, and has established a consultative relationship with a licensed master social worker.

(f) Orientation, skills education, and evaluation.

(1) All personnel providing dialysis in the home must receive orientation and skills education and demonstrate knowledge of the following:

(A) anatomy and physiology of the normal kidney;

(B) fluid, electrolyte, and acid-base balance;

(C) pathophysiology of renal disease;

(D) acceptable laboratory values for the client with renal disease;

(E) theoretical aspects of dialysis;

(F) vascular access and maintenance of blood flow;

(G) technical aspects of dialysis;

(H) peritoneal dialysis catheter, testing for peritoneal membrane equilibration, and peritoneal dialysis adequacy clearance, if applicable;

(I) the monitoring of clients during treatment, beginning with treatment initiation through termination;

(J) the recognition of dialysis complications, emergency conditions, and institution of the appropriate corrective action. This includes training agency personnel in emergency procedures and how to use emergency equipment;

(K) psychological, social, financial, and physical complications of chronic dialysis;

(L) care of the client with chronic renal failure;

(M) dietary modifications and medications for the uremic client;

(N) alternative forms of treatment for ESRD;

(O) the role of renal health team members (physician, nurse, social worker, and dietitian);

(P) performance of laboratory tests (hematocrit and blood glucose);

(Q) the theory of blood products and blood administration; and

(R) water treatment to include:

(i) standards for treatment of water used for dialysis as described in §3.2.1 (Hemodialysis Systems) and §3.2.2 (Maximum Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 500, Arlington, Virginia 22201. Copies of the standards are indexed and filed in the Department of Aging and Disability Services, 701 W. 51st Street, Austin, Texas 78751-2321, and are available for public inspection during regular working hours;

(ii) systems and devices;

(iii) monitoring; and

(iv) risks to clients of unsafe water.

(2) The requirements for the orientation and skills education period for licensed nurses are as follows.

(A) The agency must develop an 80-hour written orientation program that includes classroom theory and direct observation of the licensed nurse performing procedures on a client in the home.

(i) The orientation program must be provided by a registered nurse qualified under subsection (e)(1) of this section to supervise the provision of dialysis services by a licensed nurse.

(ii) The licensed nurse must pass a written skills examination or competency evaluation at the conclusion of the orientation program and prior to the time the licensed nurse delivers independent client care.

(B) The licensed nurse must complete the required classroom component as described in paragraph (1)(A)-(E), (K)-(O),

(Q) and (R) of this subsection and satisfactorily demonstrate the skills described in paragraph (1)(F)-(J) and (P) of this subsection. The orientation program may be waived by successful completion of the written examination as described in subparagraph (A)(ii) of this paragraph.

(C) The supervising nurse or qualified designee must complete an orientation competency skills checklist for each licensed nurse to reflect the progression of learned skills, as described in subsection (f)(1) of this section.

(D) Prior to the delivery of independent client care, the supervising nurse or qualified designee must directly supervise the licensed nurse for a minimum of three dialysis treatments and ensure satisfactory performance. Dependent upon the trainee's experience and accomplishments on the skills checklist, additional supervised dialysis treatments may be required.

(E) Continuing education for employees must be provided quarterly.

(F) Performance evaluations must be done annually.

(G) The supervising nurse or qualified designee must provide direct supervision to the licensed nurse providing dialysis services monthly or more often if necessary. Direct supervision means that the supervising nurse is on the premises but not necessarily immediately present where dialysis services are being provided.

(g) Hospital transfer procedure. An agency must establish an effective procedure for the immediate transfer to a local Medicare-certified hospital for clients requiring emergency medical care. The agency must have a written transfer agreement with such a hospital, or all physician members of the agency's medical staff must have admitting privileges at such a hospital.

(h) Backup dialysis services. An agency that supplies home staff-assisted dialysis must have an agreement with a licensed end stage renal disease (ESRD) facility to provide backup outpatient dialysis services.

(i) Coordination of medical and other information. An agency must provide for the exchange of medical and other information necessary or useful in the care and treatment of clients transferred between treating facilities. This provision must also include the transfer of the client care plan, hepatitis B status, and long-term program.

(j) Transplant recipient registry program. An agency must ensure that the names of clients awaiting cadaveric donor transplantation are entered in a recipient registry program.

(k) Testing for hepatitis B. An agency must conduct routine testing of home dialysis clients and agency employees to ensure detection of hepatitis B in employees and clients.

(1) An agency must offer hepatitis B vaccination to previously unvaccinated, susceptible new staff members in accordance with 29 Code of Federal Regulations, §1910.1030(f)(1)-(2) (Bloodborne Pathogens).

(A) Staff vaccination records must be maintained in each staff member's personnel file.

(B) New staff members providing home dialysis care must be screened for hepatitis B surface antigen (HBsAg) and the results reviewed prior to the staff providing client care, unless the new staff member provides the agency documentation of positive serologic response to hepatitis B vaccine.

(C) An agency must establish, implement, and enforce a policy for repeated serologic screening of staff. The repeated sero-

logic screening must be based on each staff member's HBsAg/antibody to HBsAg (anti-HBs), and must be congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 1993, published by the United States Department of Health and Human Services (USDHHS). This document may be obtained by writing the Home and Community Support Services Program, Department of Aging and Disability Services, 701 W. 51st Street, Austin, Texas 78751-2321 or calling 438-3011 or writing the United States Department of Health and Human Services at the Public Health Service, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Hospital Infection Program, Mail Stop C01, Atlanta, Georgia 30333, or calling 404-639-2318.

(2) With the advice and consent of a client's nephrologist or attending physician, an agency must make the hepatitis B vaccine available to a client who is susceptible to hepatitis B, provided that the client has coverage or is willing to pay for vaccination.

(A) An agency must make available to clients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Candidates for home dialysis must be screened for HBsAg within one month before or at the time of admission to the agency.

(C) Repeated serologic screening must be based on the antigen or antibody status of the client.

(D) Monthly screening for HBsAg is required for clients whose previous test results are negative for HBsAg.

(E) Screening of HbsAg-positive or anti-HbsAg-positive clients may be performed on a less frequent basis, provided that the agency's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Diseases in the United States, 1993, published by the USDHHS.

(1) CPR certification. All direct client care employees must have current CPR certification.

(m) Initial admission assessment. Assessment of the client's residence must be made to ensure a safe physical environment for the performance of dialysis. The initial admission assessment must be performed by a qualified registered nurse who meets the qualifications under subsection (e)(1)(A) of this section.

(n) Client long-term program. The agency must develop a long-term program for each client admitted to home dialysis. Criteria must be defined in writing and must provide guidance to the agency in the selection of clients suitable for home staff-assisted dialysis and in noting changes in a client's condition that would require discharge from the program. For the purposes of this subsection, Long-term program means the written documentation of the selection of a suitable treatment modality and dialysis setting which has been selected by the client and the interdisciplinary team.

(o) Client history and physical. The agency must ensure that the history and physical is conducted upon the client's admission or no more than six months prior to the date of admission, then annually after the date of admission.

(p) Physician orders. If home staff-assisted dialysis is selected, the physician must prepare orders outlining specifics of prescribed treatment.

(1) If these physician's orders are received verbally, they must be confirmed in writing within a reasonable time frame. An agency must adopt and enforce a policy on the time frame for the countersignature of a physician's verbal orders. Medical orders for home

staff-assisted dialysis must be revised as necessary but reviewed and updated at least every six months.

(2) The initial orders for home staff-assisted dialysis must be received prior to the first treatment and must cover all pertinent diagnoses, including mental status, prognosis, functional limitations, activities permitted, nutritional requirements, medications and treatments, and any safety measures to protect against injury. Orders for home staff-assisted dialysis must include frequency and length of treatment, target weight, type of dialyzer, dialysate, dialysate flow rate, heparin dosage, and blood flow rate, and must specify the level of preparation required for the caregiver, such as a licensed vocational nurse or registered nurse.

(q) Client care plan. The client care plan must be developed after consultation with the client and the client's family by the interdisciplinary team. The interdisciplinary team must include the physician, the registered nurse, the dietitian, and the qualified social worker responsible for planning the care delivered to the home staff-assisted dialysis patient.

(1) The initial client care plan must be completed by the interdisciplinary team within ten calendar days after the first home dialysis treatment.

(2) The client care plan must implement the medical orders and must include services to be rendered, such as the identification of problems, methods of intervention, and the assignment of health care personnel.

(3) The client care plan must be in writing, be personalized for the individual, and reflect the ongoing medical, psychological, social, nutritional, and functional needs of the client, including treatment goals.

(4) The client care plan must include written evidence of coordination with other service providers, such as dialysis facilities or transportation providers, as needed to assure the provision of safe care.

(5) The client care plan must include written evidence of the client's or client's legal representative's input and participation, unless they refuse to participate. At a minimum, the client care plan must demonstrate that the content was shared with the client or the client's legal representative.

(6) For non-stabilized clients, where there is a change in modality, unacceptable laboratory work, uncontrolled weight changes, infections, or a change in family status, the client care plan must be reviewed at least monthly by the interdisciplinary team. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when progress toward stabilization or the goals are not achieved, must be documented and included in the client record.

(7) For a stable client, the client care plan must be reviewed and updated as indicated by any change in the client's medical, nutritional, or psychosocial condition or at least every six months. The long-term program must be revised as needed and reviewed annually. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when the goals are not achieved, must be documented and included in the client record.

(r) Medication administration. Medications must be administered only by licensed personnel.

(s) Client records. In addition to the applicable information described in §97.301(a)(9) of this chapter (relating to Client Records),

records of home staff assisted dialysis clients must include the following:

- (1) a medical history and physical;
  - (2) clinical progress notes by the physician, qualified licensed nurse, qualified dietitian, and qualified social worker;
  - (3) dialysis treatment records;
  - (4) laboratory reports;
  - (5) a client care plan;
  - (6) a long-term program; and
  - (7) documentation of supervisory visits.
- (t) Water treatment.

(1) Water used for dialysis purposes must be analyzed for chemical contaminants every six months. Additional chemical analysis must be conducted if test results exceed the maximum levels of chemical contaminants listed in §3.2.2 (Maximum Level of Chemical Contaminants) of the American National Standards for Hemodialysis Systems, March 1992 Edition, published by the AAMI. Copies of the standards are indexed and filed in the Department of Aging and Disability Services, 701 W. 51st Street, Austin, Texas 78751-2321, and are available for public inspection during regular working hours.

(2) Water used for dialysis must be treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

(3) Water used to prepare dialysate must meet the requirements set forth in §3.2.1 (Hemodialysis Systems) and §3.2.2 (Maximum Level of Chemical Contaminants), March 1992 Edition, published by the AAMI. Copies of the standards are indexed and filed in the Department of Aging and Disability Services, 701 W. 51st Street, Austin, Texas 78751-2321, and are available for public inspection during regular working hours.

(4) Records of test results and equipment maintenance must be maintained at the agency.

(u) Equipment testing. An agency must adopt and enforce a policy to describe how the nurse will check the machine for conductivity, temperature, and pH prior to treatment, and describe the equipment required for these tests. The equipment must be available for use prior to each treatment. This policy must reflect current standards.

(v) Preventive maintenance for equipment. An agency must develop, and enforce a written preventive maintenance program to ensure client care related equipment receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently if recommended by the manufacturer. The preventive maintenance may be provided by agency or contractor staff qualified by training or experience in the maintenance of dialysis equipment.

(1) All equipment used by a client in home dialysis must be maintained free of defects, which could be a potential hazard to clients, the client's family or agency personnel.

(A) Agency staff must be able to identify malfunctioning equipment and report such equipment to the appropriate agency staff. Malfunctioning equipment must be immediately removed from use.

(B) Written evidence of all preventive maintenance and equipment repairs must be maintained.

(C) After repairs or alterations are made to any equipment, the equipment must be thoroughly tested for proper operation before returning to service.

(D) An agency must comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (USC), §360i(b), concerning reporting when a medical device as defined in 21 USC, §321(h) has or may have caused or contributed to the injury or death of an agency client.

(2) In the event that the water used for dialysis purposes or home dialysis equipment is found not to meet safe operating parameters, and corrections cannot be effected to ensure safe care promptly, the client must be transferred to a licensed hospital (if inpatient care is required) or licensed ESRD facility until such time as the water or equipment is found to be operating within safe parameters.

(w) Reuse or reprocessing of medical devices. Reuse or reprocessing of disposable medical devices, including but not limited to, dialyzers, end-caps, and blood lines must be in accordance with this subsection.

(1) An agency's reuse practice must comply with the American National Standard, Reuse of Hemodialyzers, 1993 Edition, published by the AAMI. An agency must adopt and enforce a policy for dialyzer reuse criteria (including any agency-set number of reuses allowed) which is included in client education materials.

(2) A transducer protector must be replaced when wetted during a dialysis treatment and must be used for one treatment only.

(3) Arterial lines may be reused only when the arterial lines are labeled to allow for reuse by the manufacturer and the manufacturer-established protocols for the specific line have been approved by the United States Food and Drug Administration.

(4) An agency must consider and address the health and safety of clients sensitive to disinfectant solution residuals.

(5) An agency must provide each client and the client's family or legal representative with information regarding the reuse practices of the agency, the opportunity to tour the reuse facility used by the agency, and the opportunity to have questions answered.

(6) An agency practicing reuse of dialyzers must:

(A) ensure that dialyzers are reprocessed via automated reprocessing equipment in a licensed ESRD facility or a centralized reprocessing facility;

(B) maintain responsibility and accountability for the entire reuse process;

(C) adopt and enforce policies to ensure that the transfer and transport of used and reprocessed dialyzers to and from the client's home does not increase contamination of the dialyzers, staff, or the environment; and

(D) ensure that DADS staff has access to the reprocessing facility as part of an agency inspection.

(x) Laboratory services. Provision of laboratory services must be as follows.

(1) All laboratory services ordered for the client by a physician must be performed by a laboratory which meets the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, §263a, Certification of Laboratories (CLIA 1988) and in accordance with a written arrangement or agreement with the agency. CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Copies of all laboratory reports must be maintained in the client's medical record.

(3) Hematocrit and blood glucose tests may be performed at the client's home in accordance with §97.284 of this title (relating to Laboratory Services). Results of these tests must be recorded in the client's medical record and signed by the qualified licensed nurse providing the treatment. Maintenance, calibration, and quality control studies must be performed according to the equipment manufacturer's suggestions, and the results must be maintained at the agency.

(4) Blood and blood products must only be administered to dialysis clients in their homes by a licensed nurse or physician.

(y) Home dialysis supplies. Supplies for home dialysis must meet the following requirements.

(1) All drugs, biologicals, and legend medical devices must be obtained for each client pursuant to a physician's prescription in accordance with applicable rules of the Texas State Board of Pharmacy.

(2) In conjunction with the client's attending physician, the agency must ensure that there are sufficient supplies maintained in the client's home to perform the scheduled dialysis treatments and to provide a reasonable number of backup items for replacements, if needed, due to breakage, contamination, or defective products. All dialysis supplies, including medications, must be delivered directly to the client's home by a vendor of such products. However, agency personnel may transport prescription items from a vendor's place of business to the client's home for the client's convenience, so long as the item is properly labeled with the client's name and direction for use. Agency personnel may transport medical devices for reuse.

(z) Emergency procedures. The agency must adopt and enforce policies and procedures for medical emergencies and emergencies resulting from a disaster.

(1) Procedures must be individualized for each client to include the appropriate evacuation from the home and emergency telephone numbers. Emergency telephone numbers must be posted at each client's home and must include 911 if available, the number of the physician, the ambulance, the qualified registered nurse on call for home dialysis, and any other phone number deemed as an emergency number.

(2) The agency must ensure that the client and the client's family know the agency's procedures for medical emergencies and emergencies resulting from a disaster.

(3) The agency must ensure that the client and the client's family know the procedure for disconnecting the dialysis equipment.

(4) The agency must ensure that the client and the client's family know emergency call procedures.

(5) A working telephone must be available during the dialysis procedure.

(6) Depending on the kinds of medications administered, an agency must have available emergency drugs as specified by the medical director.

(7) In the event of a medical emergency or an emergency resulting from a disaster requiring transport to a hospital for care, the agency must assure the following:

(A) the receiving hospital is given advance notice of the client's arrival;

(B) the receiving hospital is given a description of the client's health status; and

(C) the selection of personnel, vehicle, and equipment are appropriate to effect a safe transfer.

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

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Kenneth L. Owens  
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Department of Aging and Disability Services  
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## SUBCHAPTER F. ENFORCEMENT

### 40 TAC §97.602

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

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## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§97.3, 97.15, 97.17, 97.19, 97.25, and 97.521 in Chapter 97, Licensing Standards for Home and Community Support Services Agencies. The amendment to §97.17 is adopted with changes to the proposed text published in the Oc-

tober 19, 2007, issue of the *Texas Register* (32 TexReg 7452). The amendments to §§97.3, 97.15, 97.19, 97.25, and 97.521 are adopted without changes to the proposed text.

The amendments are adopted to implement portions of Senate Bill (SB) 1318, 80th Legislature, 2007. SB 1318, in part, amended Texas Health and Safety Code, §142.006, to provide that a license DADS issues to a home and community support services agency (agency) is valid for two years. SB 1318 also amended the Texas Health and Safety Code, §142.006, to allow the HHSC executive commissioner, on behalf of DADS, to adopt a system under which a license expires on various dates during the two-year period and to prorate the license fee for the year in which a license expiration date is changed. The adopted amendments revise references from a one-year license to a two-year license and establish a staggered system of license renewals and prorated license fees for the first two years in which the rules are in effect. The adoption sets new license fees to accommodate the new two-year licensing period and changes the maximum license fee from \$875 to \$1,750.

In addition, SB 1318 repealed a provision that allowed an agency to renew a license by paying a renewal fee that is one-and-one-half times the normal fee if the agency's license has been expired for 90 days or less. The adopted amendments delete the rule that allows an agency to renew an expired license, which was based on the repealed provision.

Finally, the amendments are adopted to update the requirements for an initial survey by requiring an agency to submit a written request for an initial survey to the designated survey office no later than six months after the effective date of its initial license.

DADS received no comments regarding adoption of the amendments. However, DADS changed §97.17(b)(1) to replace the phrase ". . . after the effective date of this section . . ." with ". . . beginning September 1, 2008, . . ." to provide a specific date on which the two-year time frame for the staggered system of license renewals and prorated license fees begins.

The proposed text of §97.17(a) contained a publication error. On page 7453, §97.17(a) should have read: "A renewal license is valid for two years, except as provided by subsection (b)(1) of this section. In order to continue providing services to clients, an agency must renew its license." This correction is included in the adoption.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §97.3

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

### 40 TAC §§97.15, 97.17, 97.19, 97.25

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

#### §97.17. *Application Procedures for a Renewal License.*

(a) A renewal license is valid for two years, except as provided by subsection (b)(1) of this section. In order to continue providing services to clients, an agency must renew its license.

(b) An agency must submit an application for license renewal and a renewal license will be valid as follows:

(1) For two years beginning September 1, 2008, an agency with a license that ends in an odd number (1, 3, 5, 7, or 9) must submit an application to renew its license before the expiration date on the license in accordance with this section. The agency's first renewal license issued beginning September 1, 2008, is valid for one year, and subsequent renewal licenses are valid for two years.

(2) An agency with a license that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its license before the expiration date on the license in accordance with this section. The agency's renewal licenses are valid for two years.

(c) For each license period, an agency must provide services to at least one client.

(d) DADS does not require an agency to admit a client under each category authorized under the license as a condition for renewal of the license.

(e) An agency must document the provision of services and keep documentation readily available for review by a DADS surveyor.

(f) DADS sends notice of expiration of a license to an agency at least 60 days before the expiration date of the license.

(1) If an agency has not received notice of expiration from DADS at least 45 days before the expiration date, the agency must

notify DADS and submit a written request for a renewal application for a license.

(2) An agency must submit to DADS a complete and correct renewal application postmarked at least 30 days before the expiration date of a license.

(3) All documents submitted with the renewal application must be notarized copies or originals.

(g) Upon receipt of a renewal application and the renewal license fee, DADS reviews the material to determine whether it is complete and correct. A complete and correct renewal application includes all documents and information that DADS requests as part of the application process. If DADS receives a partial fee, the renewal application and monies are returned.

(1) DADS processes the renewal application according to the time frames in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).

(2) If an agency decides not to continue the application process for a renewal license after submitting the renewal application and the renewal license fee, the agency must submit to DADS a written request to withdraw the renewal application. DADS does not refund the renewal license fee.

(3) If an agency receives a notice from DADS that some or all of the information required by this section is missing or incomplete, the agency must submit the required information no later than 30 days after the date of the notice. If an agency fails to submit the required information within 30 days after the notice date, DADS considers the renewal application incomplete and denies the application. If DADS denies the renewal application, DADS does not refund the renewal license fee.

(h) If an agency fails to make a timely and sufficient renewal application at least 30 days before the expiration date of the license, the agency must cease operation on the date the license expires. If an agency makes a timely renewal application of a license in accordance with this section, and an action to revoke, suspend, or deny renewal of the license is pending, the agency may continue to operate, and the license is valid until the agency has had an opportunity for a formal hearing as described in §97.601 of this chapter (relating to Enforcement Actions). DADS issues a renewal license only if DADS determines the reason for the proposed action no longer exists.

(i) If a license holder fails to timely renew a license because the license holder is or was on active duty with the armed forces of the United States of America outside the state of Texas, the license holder may renew the license pursuant to this subsection.

(1) An individual having power of attorney from the license holder or other authority to act on behalf of the license holder may request renewal of the license. The renewal application must include a current address and telephone number for the individual requesting the renewal.

(2) An agency may request a renewal application before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the license holder is or was on active military duty serving outside the state of Texas must be filed with DADS along with the renewal application.

(4) A copy of the power of attorney from the license holder or other authority to act on behalf of the license holder must be filed with DADS along with the renewal form.

(5) A license holder renewing under this subsection must pay the applicable renewal fee.

(6) A license holder is not authorized to operate the agency for which the license was obtained after the expiration of the license unless and until the license holder actually renews the license.

(7) This subsection applies to a license holder who is an individual or a partnership comprised of individuals, all of whom are or were on active duty with the armed forces of the United States of America serving outside the state of Texas.

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

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## SUBCHAPTER E. LICENSURE SURVEYS DIVISION 2. THE SURVEY PROCESS

### 40 TAC §97.521

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

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## CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS SUBCHAPTER B. APPLICATION PROCEDURES

### 40 TAC §§98.11, 98.15, 98.21

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§98.11, 98.15, and 98.21 in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements. The amendment to §98.15 is adopted with changes to the proposed text published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7455). The amendments to §98.11 and §98.21 are adopted without changes to the proposed text.

The amendments are adopted to comply with some of the provisions of Senate Bill (SB) 1318, 80th Legislature, Regular Session, 2007, which amended the Texas Human Resources Code, §103.006 and §103.007. Texas Human Resources Code, §103.006 increases the license period for adult day care facilities from one to two years. Section 103.006 also allows the executive commissioner of HHSC, on behalf of DADS, to adopt by rule a system under which license expiration dates are staggered during a two-year period and to require DADS to prorate fees for licenses issued for less than two years. Texas Human Resources Code, §103.007 increases the license fee to make it proportionate to the new two-year license period.

DADS received no comments regarding adoption of the amendments. However, DADS changed §98.15(b)(1) to replace the phrase ". . . after the effective date of this section . . ." with ". . . beginning September 1, 2008, . . ." to provide a specific date on which the two-year time frame for the staggered system of license renewals and prorated license fees begins.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

#### §98.15. *Renewal Procedures and Qualifications.*

(a) Each license issued under this chapter must be renewed before the license expiration date. Each license expires two years from the date issued, except as provided by subsection (b)(1) of this section. A license issued under this chapter is not automatically renewed.

(b) A facility must submit an application for license renewal and a renewal license will be valid as follows:

(1) For two years beginning September 1, 2008, a facility with a facility identification number that ends in an odd number (1, 3, 5, 7, or 9) must submit an application to renew its license before the expiration date on the license in accordance with this section. The facility's first renewal license issued beginning September 1, 2008, is



valid for one year, and subsequent renewal licenses are valid for two years.

(2) A facility with a facility identification number that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its license before the expiration date on the license in accordance with this section. The facility's renewal licenses are valid for two years.

(c) Each license holder must file an application for renewal with DADS at least 45 days before the expiration of the current license. DADS considers that an individual has filed a timely and sufficient application for the renewal of a license, if the license holder:

(1) submits a complete application to DADS, and DADS receives that complete application at least 45 days before the current license expires; or

(2) submits an incomplete application to DADS with a letter explaining the circumstances that prevented the inclusion of the missing information, and DADS receives the incomplete application and letter at least 45 days before the current license expires. The missing information must be provided and the application completed within 30 days before the current license expiration date or the application may be denied for failure to provide the required information.

(d) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in DADS' Regulatory Services Licensing and Credentialing Section within 15 days after the postmark.

(e) Failure to file a timely and sufficient application will result in the expiration of the license on the expiration date listed on the license.

(f) The application for renewal must contain the same information required for an original application and the license fee as described in §98.21 of this subchapter (relating to License Fees).

(g) The renewal of a license may be denied for the same reasons an original application for a license may be denied (see §98.19 of this subchapter (relating to Criteria for Denying a License or Renewal of a License)).

(h) The facility must have an annual inspection by the local fire marshal and must submit a copy of the most current inspection as part of the renewal procedures.

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

Filed with the Office of the Secretary of State on January 24, 2008.

TRD-200800345

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: October 19, 2007

For further information, please call: (512) 438-3734



# 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 Title 37, Part 6, Chapter 151, §151.6, concerning Petition for the Adoption of a Rule. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800328

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: January 23, 2008



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 159, §159.13, concerning Educational Services to Released Offenders/Memorandum of Understanding. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800329

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: January 23, 2008



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, §163.5, concerning Waiver to Standards. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written

comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800330

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: January 23, 2008



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, §163.33, concerning Community Supervision Officers. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800331

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: January 23, 2008



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, §163.38, concerning Sex Offender Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800332

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: January 23, 2008



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, §163.41, concerning Medical and Psychological Information. This review is conducted pursuant to Texas

Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800333  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: January 23, 2008



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, §163.43, concerning Funding and Financial Management. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200800334  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: January 23, 2008



## Adopted Rule Reviews

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 163, §163.31, concerning Sanctions, Programs, and Services, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §163.31 continue to exist, and it readopts the section.

Notice of the review was published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9359). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.31 in the December 14, 2007, issue of the *Texas Register* (32 Tex Reg 9301). The Board adopted the amended rule on January 23, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200800335  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: January 23, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 163, §163.36, concerning Mentally Impaired Offender Supervision, in accordance with the requirements

of Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §163.36 continue to exist, and it readopts the section.

Notice of the review was published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9359). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.36 in the December 14, 2007, issue of the *Texas Register* (32 Tex Reg 9303). The Board adopted the amended rule on January 23, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200800336  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: January 23, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 163, §163.39, concerning Residential Services, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §163.39 continue to exist, and it readopts the section.

Notice of the review was published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9359). Comments were received as a result of that notice, and changes were incorporated into the proposed amended rule.

As a result of the rule review, the TDCJ published proposed amendments to §163.39 in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9303). The Board adopted the amended rule with changes on January 23, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200800337  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: January 23, 2008



## State Securities Board

### Title 7, Part 7

Pursuant to the notice of proposed rule review published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6161), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the readoption of Chapters 107, 127, and 131.

This concludes the review of 7 TAC Chapters 107, 127, and 131.

TRD-200800349  
Denise Voigt Crawford  
Securities Commissioner  
State Securities Board  
Filed: January 25, 2008



Pursuant to the notice of proposed rule review published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9136), the State Securities Board (Board) has reviewed and considered for re-adoption, revision, or repeal, all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 109, Transactions Exempt from Registration; Chapter 111, Securities Exempt from Registration; and Chapter 139, Exemptions by Rule or Order.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the re-adoption of Chapters 109, 111, and 139.

This concludes the review of 7 TAC Chapters 109, 111, and 139.

TRD-200800351  
Denise Voigt Crawford  
Securities Commissioner  
State Securities Board  
Filed: January 25, 2008



Pursuant to the notice of proposed rule review published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9753), the State Securities Board (Board) has reviewed and considered for re-adoption, revision, or repeal, all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapters 117, Administrative Guidelines for Registration of Real Estate Programs; 121, Administrative Guidelines for Registration of Oil and Gas Programs; 129, Administrative Guidelines for Registration of Asset-Backed Securities; 141, Administrative Guidelines for Registration of Equipment Programs; and 143, Administrative Guidelines for Registration of Real Estate Investment Trusts.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

These five chapters constitute the Board's adoption of registration guidelines promulgated by the North American Securities Administrators Association (NASAA). NASAA has recently updated all of these guidelines. As a result, during the coming months the Board anticipates proposing repeal of the existing chapters and adoption of the new chapters, pursuant to the Administrative Procedure Act, Texas

Government Code Annotated, Chapter 2001. Chapter 117, the first new chapter to be proposed, will soon be published in the "Proposed Rules" section of a future issue of the *Texas Register*.

No comments were received regarding the re-adoption of Chapters 117, 121, 129, 141, and 143.

TRD-200800350  
Denise Voigt Crawford  
Securities Commissioner  
State Securities Board  
Filed: January 25, 2008



Texas State Soil and Water Conservation Board

**Title 31, Part 17**

Pursuant to the notice of proposed rule review published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9360), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for re-adoption, revision, or repeal 31 TAC, Part 17, Chapter 517, Subchapter B, §§517.22 - 517.37, Cost-Share Assistance for Brush Control, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts this chapter, without change.

TRD-200800495  
Mel Davis  
Special Projects Coordinator  
Texas State Soil and Water Conservation Board  
Filed: January 29, 2008



Pursuant to the notice of proposed rule review published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9360), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for re-adoption, revision, or repeal 31 TAC, Part 17, Chapter 527, §§527.1 - 527.7, Removal of a District Director, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts this chapter, without change.

TRD-200800496  
Mel Davis  
Special Projects Coordinator  
Texas State Soil and Water Conservation Board  
Filed: January 29, 2008



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §85.452(d)

| <b>Tier</b> | <b>Criteria</b>   | <b>Total Inspection Frequency (includes both periodic and risk-based inspections)</b> |
|-------------|---|---|
| Tier 1      | Violation of signage requirements as determined by the department.<br>Violation of the rules determined by the department to pose a potential economic harm to property.<br>Repeated violations relating to unlicensed activity.  | Once each year  |
| Tier 2      | A serious or repeated violation relating to documentation and records requirements.<br>Failure to maintain required records.<br>Serious or repeated violations relating to unlicensed activity.   | Twice each year   |
| Tier 3      | Repeated, serious violations related to VSF technical requirements.<br>A significant violation of notifications rules, particularly those that threaten economic harm.<br>Significant or repeated violations relating to unlicensed activity.<br>Violations related to improper disposal of vehicles. | Four times each year  |

Figure: 16 TAC §86.452(d)

| <b>Tier</b> | <b>Criteria</b>  | <b>Total Inspection Frequency (includes both periodic and risk-based inspections)</b> |
|-------------|--|---|
| Tier 1      | Violation of the rules determined by the department to pose a potential economic harm to property.<br>Repeated violations relating to unlicensed activity.   | Once each year  |
| Tier 2      | A serious or repeated violation relating to documentation and records requirements.<br>Failure to maintain required records.<br>Serious or repeated violations relating to unlicensed activity.  | Twice each year   |
| Tier 3      | Repeated, serious violations related to towing company technical requirements.<br>A significant violation of notifications rules, particularly those that threaten economic harm.<br>Significant or repeated violations relating to unlicensed activity. | Four times each year  |

Figure: 37 TAC §159.13(a)

|                    |                                    |  |
|--------------------|------------------------------------|--|
| STATE OF TEXAS §   | <b>Division Number:</b> <u>360</u> | <b>Program Name:</b> Adult and Community Education                   |
| COUNTY OF TRAVIS § | <b>Org. Code:</b> <u>NA</u>        | <b>Legal/Funding Authority:</b> <u>TGC 508.318 &amp; TGC 771.001</u> |
|                    | <b>Speed Chart:</b> <u>NA</u>      |  |
|                    | <b>Payee Name:</b> <u>NA</u>       | <b>Payee ID:</b> <u>NA</u>   |
|                    | <b>ISAS Contract #:</b>            | <b>PO #:</b> <u>NA</u>   |

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is a non-financial, mutual agreement between the State agencies shown below as Participating Agencies, pursuant to the authority granted and in compliance with the provisions of Texas Government Code, §771.001 and §508.318 et. seq.

I. PARTICIPATING AGENCIES:

Receiving Agency: TEXAS EDUCATION AGENCY

Performing Agency: THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

II. STATEMENT OF SERVICES TO BE PERFORMED:

Pursuant to the Texas Government Code, the Texas Department of Criminal Justice (TDCJ) and the Texas Education Agency shall set forth the respective responsibilities of both agencies in implementing a continuing education program to increase the literacy of releasees.

The objective of this program is to offer releasees choices and opportunities, within the realm of educational services to remain outside of prison and achieve maximum integration in the community. The following are guiding principals to accomplish the objectives of this MOU:

- the releasee will achieve more success outside of prison if a support system is in place to promote educational growth;
- the releasee may be less likely to become a repeat offender if he/she pursues an education; and
- the releasee must be encouraged to recognize the need for increasing his/her educational level to remain in the free world and learn to function as a productive citizen.

Participation:

The Texas Department of Criminal Justice will:

- establish a continuing education system to increase literacy for releasees in the District Resource Centers.
- establish a system whereby TDCJ will inform adult education cooperatives of the process and requirements for continued education of releasees;
- provide adult education cooperatives with assessment and educational profile information that will facilitate student placement in appropriate programs;
- coordinate with adult education cooperatives in implementing a system for identification of student needs and barriers, student referral, outreach activities and releasee's compliance with educational requirements;
- identify resources that assist adult education cooperatives in expanding services for releasees; and
- participate in training necessary to develop the capacity at the local level to access and interact effectively with adult education service providers.

The Texas Education Agency will:

- coordinate with the TDCJ to inform local parole offices of services available through the adult education cooperative system in which local school districts, junior colleges, and education service centers provide instructional programs throughout the state;
- assist TDCJ in identifying barriers to provide adult education services to released offender;
- assist local adult education programs in developing capacity to serve the released offender population;
- coordinate with TDCJ in establishing a referral process between local parole offices and adult education cooperatives whereby releasees will be referred to adult education programs;
- assist adult education cooperatives in providing services to releasees in adult education programs on a first-come, first-served basis and to the extent the funds and classroom space are available;
- assist local education adult education cooperatives in communicating and coordinating with local parole offices on prospective students awaiting referral to education programs, availability of services, identification of financial resources, and other educational programs available for released offenders;
- coordinate with the TDCJ in the development of proof program objectives and collecting data to establish performance standards for released offenders;
- coordinate with TDCJ in providing training to assist local parole officers with the coordination of adult education services to released offenders; and
- monitor program quality and compliance of local adult education programs serving released offenders.

III. TERM OF THE MOU:

This MOU is effective September 1, 2007 and shall terminate on August 31, 2011. This MOU may also be cancelled prior to the termination date by mutual agreement of both parties. This MOU may be considered for expansion, modification, or amended at any time during the term of the MOU upon mutual agreement of both parties.

IV. GENERAL PROVISIONS:

Attached hereto and made a part hereof by reference are the documents indicated with an "X" beside each:

General Provisions

**THE UNDERSIGNED PARTICIPATING PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the effected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies, or materials in this IAC are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under Contract given to the lowest responsible bidder.**

**RECEIVING AGENCY** further certifies that it has the authority to receive the above services by authority granted in: Texas Government Code, §508.318 and §771.003

**PERFORMING AGENCY** further certifies that it has authority to perform the above services by authority granted in: Texas Government Code, §508.318 and §771.003

|   |   |
|---|---|
| The authorized representatives of the undersigned parties bind themselves to the faithful performance of this MOU. It is mutually understood that this MOU will be effective on the earliest date shown in Section III. |   |
| RECEIVING AGENCY<br>TEXAS EDUCATION AGENCY  | PERFORMING AGENCY<br>TEXAS DEPARTMENT OF CRIMINAL JUSTICE |
| Name of Agency  | Name of Agency  |
| By: _____<br>Shirley Beaulieu   | By: _____<br>Charles Marsh                                |
| Associate Commissioner / CFO  | Chief Financial Officer                                   |
| Return one copy with original signature to:<br>Norma Barrera<br>Texas Education Agency<br>1701 North Congress Avenue<br>Austin, Texas 78701-1494  |   |

**General Provisions**

**Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.

**Right to Audit:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards.



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**IN****ADDITION**

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

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**Department of Aging and Disability Services**

## Notice of Public Hearing

The Department of Aging and Disability Services (DADS) has begun the process of developing the FYs 2008-2009 Report Update for State Mental Retardation Facilities, which will be submitted with the DADS FYs 2010-2011 Legislative Appropriations Request. This report is statutorily required by the Health and Safety Code (HSC), Title 7 of the Mental Health and Mental Retardation, Chapter 533, §533.032, Long-Range Planning.

DADS is seeking input regarding long-term planning information to be discussed in this report. The previous FYs 2006-2007 Report Update for State Mental Retardation Facilities may be downloaded from the DADS website through either of the links below:

[http://www.dads.state.tx.us/news\\_info/publications/planning/06-07\\_SMRF\\_Report\\_%20Final07028061.pdf](http://www.dads.state.tx.us/news_info/publications/planning/06-07_SMRF_Report_%20Final07028061.pdf)

[http://www.dads.state.tx.us/news\\_info/publications/planning/06-07\\_SMRF\\_Report\\_%20Final07028061.doc](http://www.dads.state.tx.us/news_info/publications/planning/06-07_SMRF_Report_%20Final07028061.doc)

To request a copy of the FYs 2006-2007 Report Update for State Mental Retardation Facilities, contact LaCrecia Stevens at (512) 438-5634.

In accordance with the requirements of HSC §533.032, DADS has scheduled a public hearing on February 20, 2008, in the Winter's Public Hearing Room, 701 W. 51st Street, Austin, Texas, Travis County. This hearing will begin at 2:00 p.m. Each speaker will have five (5) minutes for his or her presentation.

Comments may also be submitted in writing to Texas Department of Aging and Disability Services, Center for Program Coordination, MC: W235, Wendy Francik, Senior Management Analyst, P.O. Box 149030, Austin, Texas 78714-9030; or by e-mail to [wendy.francik@dads.state.tx.us](mailto:wendy.francik@dads.state.tx.us).

Written comments must be received by February 22, 2008, 5:00 p.m. for consideration.

Individuals requiring an interpreter for the deaf or hearing impaired should contact LaCrecia Stevens, (512) 438-5634, TDD (512) 424-3250 at least 72 hours prior to the hearing.

TRD-200800541

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Filed: January 30, 2008

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**Comptroller of Public Accounts**

## Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; §5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #183a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent(s) will assist Comptroller in

conducting an Appraisal Standards Review (ASR) of the Harris County Appraisal District (HCAD), the second largest appraisal district in the United States (in appraised properties). Comptroller reserves the right to select multiple contractors to participate in conducting the review of HCAD, as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about March 25, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, February 8, 2008, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: <http://esbd.cpa.state.tx.us> after 10 a.m. (CZT) on Friday, February 8, 2008.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CZT), on Friday, February 22, 2008. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, February 29, 2008, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, March 7, 2008. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts 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 is as follows: Issuance of RFP - February 8, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - February 22, 2008, 2 p.m. CZT; Official Responses to Questions Posted - February 29, 2008, or as soon thereafter as practical; Proposals Due - March 7, 2008, 2 p.m. CZT; Contract Execution - March 25, 2008, or as soon thereafter as practical; Com-

mencement of Project Activities - March 25, 2008, or as soon thereafter as practical.

TRD-200800521

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 30, 2008

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/04/08 - 02/10/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/04/08 - 02/10/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200800464

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 28, 2008

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## Texas Education Agency

### Notice of Correction: Request for Applications Concerning the Intensive Summer Programs Pilot Program, 2008-2009

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-08-102, Request for Applications Concerning the Intensive Summer Programs Pilot Program, 2008-2009, in the January 25, 2008, issue of the *Texas Register* (33 TexReg 766).

The TEA is amending the approximate project funding amounts available. The maximum grant award shall be no more than \$150,000 for the entire grant period. This correction reflects a change from the maximum grant award of not more than \$150,000 for each program year of the grant period.

Further Information. For clarifying information about the RFA, contact Amy Werst, Division of Discretionary Grants, TEA, (512) 463-9269, or Chris Caesar, Division of State Initiatives, TEA, (512) 936-6060.

TRD-200800530

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: January 30, 2008

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### Request for Applications Concerning Mathematics Instructional Coaches Pilot Program, 2008-2010

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-105 from school districts or shared services arrangements of school districts at which: (1) a minimum of 65 percent of the total student en-

rollment was identified as economically disadvantaged for the preceding three school years, or (2) 60 percent or fewer students across all grade levels met the state standard on the mathematics portion of the Texas Assessment of Knowledge and Skills during the preceding three school years, as indicated by the Standard Accountability Indicator on the 2004-2005, 2005-2006, and 2006-2007 Academic Excellence Indicator System district reports. The TEA will publish an eligibility list to accompany the RFA.

Description. The purpose of the Mathematics Instructional Coaches Pilot Program grant is to promote college and workforce readiness at eligible districts by providing assistance in developing the content knowledge and instructional expertise of teachers who instruct students in mathematics at the middle, junior high, or high school levels. Grant recipients must design and implement a Mathematics Instructional Coaches Pilot Program in partnership with an entity from the Approved Service Provider List provided by the TEA.

Dates of Project. The Mathematics Instructional Coaches Pilot Program will be implemented during the 2008-2009 and 2009-2010 school years. Applicants should plan for a starting date of no earlier than July 1, 2008, and an ending date of no later than May 31, 2010.

Project Amount. Funding will be provided for approximately 16-20 projects, totaling approximately \$2,186,000. Each applicant may apply for a maximum possible grant award of \$225,000 for the 2008-2010 grant period. Continuation and expansion funding may be made available based on evaluation results of the pilot program and budget approval by the commissioner of education and the state legislature. This project is funded 100% from state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Dale Fowler, Division of State Initiatives, Texas Education Agency, (512) 936-6060. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted

on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, April 1, 2008, to be eligible to be considered for funding.

TRD-200800529

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: January 30, 2008



## Education Service Center, Region 16

Official Notice for Election Places 4 and 5 on the Board of Directors

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 63 school districts and two charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8 a.m. to 5 p.m.) Monday through Thursday, (8 a.m. to 4 p.m.) Friday, beginning Friday, February 1, 2008. Deadline for filing is Wednesday, February 20, 2008, at 5 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 5 p.m., February 20, 2008. Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, TX 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 4 - Counties of Hansford, Hemphill, Hutchinson, Lipscomb, Ochiltree, and Roberts

Place 5 - That part of Potter and Randall counties included in the boundaries of Amarillo Independent School District

To hold the office of an Education Service Center Board of Director, one must: Be a United States of America citizen; Be at least 18 years of age; Be a resident of the region served and of the geographic area included in the place designated outlined above;

To hold the office of Board member, one may not: Be engaged professionally in education; Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 ESC Board has determined that no election will be held.

TRD-200800355

John Bass  
Executive Director  
Education Service Center, Region 16  
Filed: January 25, 2008



## Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on

the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 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. Section 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 **March 10, 2008**. Section 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) 239-1864 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 March 10, 2008**. 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, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 16303 Food Store Associates, Inc. dba Sunrise Super Stop 15; DOCKET NUMBER: 2008-0029-PST-E; IDENTIFIER: RN103146536; LOCATION: Houston, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.49(a)(1), by failing to provide corrosion protection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Aero-Marine Engineering, Inc.; DOCKET NUMBER: 2007-1770-AIR-E; IDENTIFIER: RN100219567; LOCATION: Bryson, Jack County, Texas; TYPE OF FACILITY: surface coating; RULE VIOLATED: 30 TAC §122.146(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the annual compliance certification report; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Sidney Wheeler, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: City of Angleton; DOCKET NUMBER: 2007-1660-MWD-E; IDENTIFIER: RN102179785; LOCATION: Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010548004, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for carbonaceous biochemical oxygen demand and ammonia nitrogen; PENALTY: \$11,250; Supplemental Environmental Project (SEP) offset amount of \$9,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Arbor Care, Inc.; DOCKET NUMBER: 2007-1583-MSW-E; IDENTIFIER: RN104893987; LOCATION: Houston,

Harris County, Texas; TYPE OF FACILITY: wood recycling; RULE VIOLATED: 30 TAC §37.921 and §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors; and 30 TAC §328.5(f)(1), by failing to maintain records demonstrating compliance with 30 TAC §328.4, recycling rates and storage limitation; PENALTY: \$4,415; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Aus-Tex Parts & Services, Ltd.; DOCKET NUMBER: 2007-1710-MWD-E; IDENTIFIER: RN102314218; LOCATION: Hays County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014060001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with its permitted effluent limits for total suspended solids (TSS); and 30 TAC §305.125(17) and TPDES Permit Number WQ0014060001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: David Zulejkic dba Buffalo Ridge Mobile Home Community; DOCKET NUMBER: 2007-1498-PWS-E; IDENTIFIER: RN102322286; LOCATION: Johnson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(d)(9), by failing to maintain three or less pressure tanks at any one time unless prior approval has been granted; 30 TAC §290.43(c), by failing to cover and design, fabricate, erect, test and disinfect in strict accordance with current American Water Works Association standards all facilities for potable water storage; 30 TAC §290.45(b)(1)(F)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(e), by failing to have the public water system operated at all times under the direct supervision of a TCEQ licensed water works operator; and 30 TAC §290.46(f)(2), by failing to have operating records accessible for review during inspection; PENALTY: \$4,690; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Option 1 Realty Group, LP dba Farmers Row Development; DOCKET NUMBER: 2008-0026-WQ-E; IDENTIFIER: RN105331284; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Byron Cory; DOCKET NUMBER: 2007-1172-WQ-E; IDENTIFIER: RN101612489; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: commercial truck washing; RULE VIOLATED: 30 TAC §305.42(a), by failing to obtain a multi sector general permit prior to allowing a commercial truck washing facility operation; and 30 TAC §26.0135(h) and the Code, §5.702, by failing to pay consolidated water quality fees and water quality assessment fees; PENALTY: \$2,040; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (913) 834-4949.

(9) COMPANY: Dallas Area Rapid Transit dba DART East Dallas Support Services Overhaul Shop; DOCKET NUMBER: 2007-1501-PST-E; IDENTIFIER: RN100662550; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: repair shop; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1),

by failing to monitor underground storage tanks (USTs) for releases; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Dixie Gas Station, Inc. dba Dixie Gas Station; DOCKET NUMBER: 2008-0025-PST-E; IDENTIFIER: RN101953925; LOCATION: Addison, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-0493-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(2) and §122.143(4), Federal Operating Permit (FOP) Number O-02181, Special Terms and Conditions (STC) 1.A., 40 Code of Federal Regulations (CFR) §63.127(b)(2), and THSC, §382.085(b), by failing to demonstrate the use of a continuous monitoring recorder; 30 TAC §115.244 and §122.143(4), FOP Number O-02181, STC 6.C.iv., and THSC, §382.085(b), by failing to perform daily inspections of the fuel dispensing facilities; 30 TAC §115.212(a)(3)(A)(ii) and §122.143(4), FOP Number O-02181, STC 1.A. and 6.B.ii., and THSC, §382.085(b), by failing to provide proper emissions control for waste material; 30 TAC §117.206(i) and §122.143(4), FOP Number O-02181, STC 1.A. and 7.A., and THSC, §382.085(b), by failing to comply with restrictions on engine operating hours in an ozone nonattainment area; 30 TAC §117.219(f)(10) and §122.143(4), FOP Number O-02181, STC 1.A. and 7.E., and THSC, §382.085(b), by failing to record the start and stop times of a diesel engine operating in an ozone nonattainment area; 30 TAC §115.144(4)(A), FOP Number O-02181, STC 1.A., and THSC, §382.085(b), by failing to demonstrate volatile organic compound (VOC) reduction efficiency; 30 TAC §115.725(d)(1) and THSC, §382.085(b), by failing to timely conduct flare analyzer calibrations; 30 TAC §101.20(2), 40 CFR §63.10(d)(5)(i), and THSC, §382.085(b), by failing to comply with the requirements of malfunction reporting for the wastewater steam stripper; 30 TAC §§101.20(1), 101.20(2), 115.352(4), 116.115(c), and 122.143(4), 40 CFR §60.482-6(a)(2) and §63.167(a)(1), FOP Number O-02181, STC 1.A. and 22., New Source Review (NSR) Permit 2128, Special Condition (SC) 8.E., and THSC, §382.085(b), by failing to equip open ended lines with a cap, blind flange, plug, or a second valve; 30 TAC §116.115(c) and §122.143(4), NSR Permit 22779, SC 8.E., FOP Number O-02177, STC 1.A. and 10., and THSC, §382.085(b), by failing to cap four open-ended lines; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 22779, SC 6.A., FOP Number O-02177, STC 1.A. and 10., and THSC, §382.085(b), by failing to operate the flare within the required heat input of 300 British thermal units per standard cubic foot; 30 TAC §115.726(d)(3) and §122.143(4), FOP Number O-02177, STC 1.J.(ii), and THSC, §382.085(b), by failing to report corrective actions within the required time frame; 30 TAC §115.725(d)(2) and §122.143(4), FOP Number O-02177, STC Number 1J.(ii), and THSC, §382.085(b), by failing to calibrate the poly butadiene unit flare analyzer; 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain authorization for emissions sources and their associated emissions prior to operation; 30 TAC §116.115(b)(2)(F) and §122.143(4), NSR Permit 49120, SC 1, FOP Number O-02177, STC 10, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §115.136(a)(1) and §122.143(4), FOP Number O-02177, STC 1.A., and THSC, §382.085(b), by failing to maintain sufficient records to demonstrate continuous compliance with VOC water

separator exemption criteria; 30 TAC §116.115(c) and §122.143(4), NSR Permit 22779, SC 8.I., FOP Number O-02177, STC 1.A. and 10., and THSC, §382.085(b), by failing to repair a leaking valve during a scheduled shutdown; 30 TAC §122.132(a), FOP Number O-02178, General Terms and Conditions, and THSC, §382.085(b), by failing to include permits by rule claims in a FOP; 30 TAC §§115.112(a)(3), 116.115(c), and 122.143(4), FOP Number O-02178, STC 1.A. and 10., NSR Permit 24677, SC 1., and THSC, §382.085(b), by exceeding permitted emissions limits for tank TK-2810; 30 TAC §116.115(c) and §122.143(4), FOP Number O-02178, STC 10., NSR Permit 24677, SC 11.F. and 13., and THSC, §382.085(b), by failing to install rupture discs and pressure gauges on three safety relief valves; 30 TAC §116.116(b)(1) and §122.143(4), FOP Number O-02178, STC 10., and THSC, §382.085(b), by failing to accurately represent operating temperatures; 30 TAC §116.115(c) and §122.143(4), FOP Number O-02178, STC 10., NSR Permit 24677, SC 9.C., and THSC, §382.085(b), by failing to perform closed loop cumene sampling; 30 TAC §117.213(a) and §122.143(4), FOP Number O-02178, STC 1.A., and THSC, §382.085(b), by failing to maintain continuous records of fuel flow; and 30 TAC §111.111(a)(1)(B) and §122.143(4), FOP Number O-02178, STC 3., and THSC, §382.085(b), by failing to prevent visible emissions; PENALTY: \$227,893; Supplemental Environmental Project (SEP) offset amount of \$91,158 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Evant; DOCKET NUMBER: 2007-1291-PWS-E; IDENTIFIER: RN101396802; LOCATION: Evant, Coryell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and §290.122(a)(2), by failing to institute all necessary "Special Precautions"; 30 TAC §290.46(r), by failing to operate the water system to provide a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.2 milligrams per liter free chlorine; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder resistant fence or lockable building to protect the well and ground storage tanks; and 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers properly to prevent vandalism and the entrance of dust, insects, and other contaminants; PENALTY: \$2,095; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2300, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: City of Gorman; DOCKET NUMBER: 2007-1683-MWD-E; IDENTIFIER: RN101917516; LOCATION: Eastland County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10091001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for five-day biochemical oxygen demand and TSS; and 30 TAC §305.125(17) and TPDES Permit Number 10091001, Sludge Provisions, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$5,022; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(14) COMPANY: Granite Construction Company; DOCKET NUMBER: 2008-0032-WR-E; IDENTIFIER: RN104645205; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: construction; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-

1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(15) COMPANY: City of Gregory; DOCKET NUMBER: 2007-1627-PWS-E; IDENTIFIER: RN101384956; LOCATION: Gregory, San Patricio County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(3) and (f)(4), by failing to secure a water purchase contract; and 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; PENALTY: \$165; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: Gulf Chemical & Metallurgical Corporation; DOCKET NUMBER: 2007-1520-AIR-E; IDENTIFIER: RN100210129; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: secondary nonferrous metals smelting and refining plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 19793 SC Number 1, and THSC, §382.085(b), by failing to comply with the allowable emission limit of 0.32 pounds per hour (lbs/hr) for VOCs; 30 TAC §116.615(2), Standard Permit Number 36867, General Conditions, and THSC, §382.085(b), by failing to comply with the allowable emission limit of 0.51 lbs/hr for particulate matter (PM); 30 TAC §116.615(6), Standard Permit Number 36867, General Conditions, and THSC, §382.085(b), by failing to demonstrate removal efficiency of the electric arc furnace east scrubber stack; 30 TAC §116.615(6), Standard Permit Number 36867, General Conditions, and THSC, §382.085(b), by failing to demonstrate removal efficiency of the electric arc furnace west scrubber stack; PENALTY: \$31,050; Supplemental Environmental Project (SEP) offset amount of \$12,420 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: International Paper Company; DOCKET NUMBER: 2007-1253-AIR-E; IDENTIFIER: RN100543073; LOCATION: Corrigan, Polk County, Texas; TYPE OF FACILITY: softwood veneer and plywood; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 48786, General Condition 8, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits for PM; PENALTY: \$14,375; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Joshua Investments, L.L.C. dba Regalado Exxon; DOCKET NUMBER: 2008-0028-PST-E; IDENTIFIER: RN100534346; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Lumberton Municipal Utilities District; DOCKET NUMBER: 2007-1727-PWS-E; IDENTIFIER: RN102678927; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and §290.122(a)(2)(A), by failing to issue a boil water notification to customers of the water system; and 30 TAC §290.46(b) and §290.46(q)(2) and THSC, §341.033(b), by failing to collect water samples for microbiological analysis; PENALTY: \$900; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Merisol USA LLC; DOCKET NUMBER: 2007-1621-AIR-E; IDENTIFIER: RN100214576; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: cresylic acid production; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-01254, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-01254, GTC, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: \$6,150; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Nabors Well Services Ltd.; DOCKET NUMBER: 2008-0030-WQ-E; IDENTIFIER: RN105359624; LOCATION: Pecos County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(22) COMPANY: Tony Parrish; DOCKET NUMBER: 2008-0031-WOC-E; IDENTIFIER: RN103310173; LOCATION: Quinlan, Hunt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Port Terminal Railroad Association; DOCKET NUMBER: 2007-1746-MWD-E; IDENTIFIER: RN102800356; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11773001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits for TSS; PENALTY: \$2,840; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Matias G. Quintanilla; DOCKET NUMBER: 2007-1864-WOC-E; IDENTIFIER: RN104237276; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §§30.5(a), 30.24(r), and 30.331(b), and the Code, §26.0301 and §37.003, by failing to renew a wastewater treatment plant operator license; PENALTY: \$250; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: River Oaks Country Club; DOCKET NUMBER: 2008-0040-PST-E; IDENTIFIER: RN100907674; LOCATION: Harris County, Texas; TYPE OF FACILITY: country club with fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$4,375; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: SI Group, Inc.; DOCKET NUMBER: 2007-1461-AIR-E; IDENTIFIER: RN100218999; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-01431, GTC, and THSC, §382.085(b),

by failing to submit the permit compliance certification; PENALTY: \$5,700; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Signature Flight Support Corporation; DOCKET NUMBER: 2008-0027-WQ-E; IDENTIFIER: RN103062071; LOCATION: Nueces County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(28) COMPANY: Texas Barge & Boat, Inc.; DOCKET NUMBER: 2007-1482-AIR-E; IDENTIFIER: RN102037959; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: barge cleaning, repairing, painting, and abrasive blasting plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-01698, GTC, and THSC, §382.085(b), by failing to report a deviation; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2007-1455-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.201(a)(2)(F) and §122.143(4), FOP Number O-1498, GTC, and THSC, §382.085(b), by failing to properly report an emissions event; 30 TAC §116.115(c) and §122.143(4), FOP Number O-1498, STC, and Special Condition 18A, Air Permit 7600A, Special Condition 1, and THSC, §382.085(b), by failing to properly operate tank 283 and tank 284; and 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.715(a), 116.715(c)(7), and 122.143(4), FOP Number O-1498, GTC, and Special Condition 18A, Air Permits 6825A/PSD-TX-49, Special Condition 5A and 7600A, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$64,641; Supplemental Environmental Project (SEP) offset amount of \$32,320 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Z Q Inc. dba Max Mart; DOCKET NUMBER: 2007-1535-PST-E; IDENTIFIER: RN102485976; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and make them available for the inspection upon request; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs; 30 TAC §334.8(c)(4)(B), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid current TCEQ delivery certificate; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200800486

Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: January 29, 2008



### Enforcement Orders

A default order was entered regarding BASN Corporation DBA Swift Food Store, Docket No. 2003-1089-PST-E on January 17, 2008 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Derdeyn/Ford, Inc., Docket No. 2003-0413-MWD-E on January 17, 2008 assessing \$41,933 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lonestar Aquafarms, Ltd., Docket No. 2005-1063-IWD-E on January 17, 2008 assessing \$3,048 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Econo Lube N' Tune, Inc., Docket No. 2005-1909-PST-E on January 17, 2008 assessing \$6,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Speedy Stop Food Stores, Ltd. dba Speedy Stop #92, Docket No. 2005-1925-MLM-E on January 17, 2008 assessing \$29,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Antonio Vera and Roman Vera dba Jessie's Drive Thru, Docket No. 2005-1960-PST-E on January 17, 2008 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark A. Mouton, Docket No. 2006-0095-OSI-E on January 17, 2008 assessing \$960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westex Capital, LTD. dba Corner Store, Docket No. 2006-0411-PST-E on January 17, 2008 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Chemical & Metallurgical Corporation, Docket No. 2006-0583-AIR-E on January 17, 2008 assessing \$154,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc. dba Country View Estates, Docket No. 2006-0801-MLM-E on January 17, 2008 assessing \$2,202 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Meldimaa Enterprise, Inc. dba Silverline Dry Cleaners, Docket No. 2006-1132-DCL-E on January 17, 2008 assessing \$4,740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ha Young Shin dba Smile Cleaners, Docket No. 2006-1252-DCL-E on January 17, 2008 assessing \$889 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bothina J. Al-Hussein dba Quality Cleaners, Docket No. 2006-1318-DCL-E on January 17, 2008 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wholesale Cleaners, Inc. dba Meyerland Cleaners, Docket No. 2006-1514-DCL-E on January 17, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Solutia Inc., Docket No. 2006-1599-AIR-E on January 17, 2008 assessing \$45,597 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Imran Khan dba Stop N Drive, Docket No. 2006-2179-PST-E on January 17, 2008 assessing \$1,580 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2007-0023-AIR-E on January 17, 2008 assessing \$102,564 in administrative penalties with \$20,512 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2007-0071-MWD-E on January 17, 2008 assessing \$7,020 in administrative penalties with \$1,404 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2007-0370-AIR-E on January 17, 2008 assessing \$217,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angie G. Vasquez, Docket No. 2007-0399-PST-E on January 17, 2008 assessing \$10,500 in administrative penalties with \$6,003 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 LGI Land, Ltd., Docket No. 2007-0446-WR-E on January 17, 2008 assessing \$1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Severiano M. Anguiano, Docket No. 2007-0464-PST-E on January 17, 2008 assessing \$5,500 in administrative penalties with \$4,300 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 City of Morgan's Point, Docket No. 2007-0564-MWD-E on January 17, 2008 assessing \$7,955 in administrative penalties with \$1,591 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Harris County Municipal Utility District 4, Docket No. 2007-0565-MWD-E on January 17, 2008 assessing \$5,080 in administrative penalties with \$1,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Big Tex Trailer Manufacturing, Inc., Docket No. 2007-0589-AIR-E on January 17, 2008 assessing \$35,000 in administrative penalties with \$7,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Live Oak Resort, Inc., Docket No. 2007-0644-PWS-E on January 17, 2008 assessing \$2,572 in administrative penalties with \$514 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fayette County, Docket No. 2007-0665-MWD-E on January 17, 2008 assessing \$2,469 in administrative penalties with \$493 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 Bond-Coat, Inc., Docket No. 2007-0667-AIR-E on January 17, 2008 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Todd Farber dba Garden Guy, Inc., Docket No. 2007-0671-LII-E on January 17, 2008 assessing \$262 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M&T Natural Stone, Inc., Docket No. 2007-0707-WQ-E on January 17, 2008 assessing \$29,760 in administrative penalties with \$5,952 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leona, Docket No. 2007-0708-PWS-E on January 17, 2008 assessing \$2,437 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2007-0722-AIR-E on January 17, 2008 assessing \$46,291 in administrative penalties with \$9,258 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabine Cogen, LP, Docket No. 2007-0781-AIR-E on January 17, 2008 assessing \$15,730 in administrative penalties with \$3,146 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Levelland, Docket No. 2007-0784-PST-E on January 17, 2008 assessing \$4,050 in administrative penalties with \$810 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wise Ready Mix Concrete Company, Docket No. 2007-0785-IWD-E on January 17, 2008 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2007-0791-IWD-E on January 17, 2008 assessing \$8,250 in administrative penalties with \$1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia Inc., Docket No. 2007-0799-IWD-E on January 17, 2008 assessing \$5,430 in administrative penalties with \$1,086 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2007-0811-AIR-E on January 17, 2008 assessing \$5,375 in administrative penalties with \$1,075 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thompson Heights Development Company, Docket No. 2007-0813-MLM-E on January 17, 2008 assessing \$1,260 in administrative penalties with \$252 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Wayne Robinson, Docket No. 2007-0817-MWD-E on January 17, 2008 assessing \$4,410 in administrative penalties with \$882 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, 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 Stolthaven Houston, Inc., Docket No. 2007-0824-IWD-E on January 17, 2008 assessing \$13,725 in administrative penalties with \$2,745 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rogers, Docket No. 2007-0833-MWD-E on January 17, 2008 assessing \$12,600 in administrative penalties with \$2,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Leon Edwards dba Minnow Bucket Marina, Docket No. 2007-0836-MWD-E on January 17, 2008 assessing \$2,400 in administrative penalties with \$480 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 PD Glycol LP, Docket No. 2007-0838-AIR-E on January 17, 2008 assessing \$3,475 in administrative penalties with \$695 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Teague, Docket No. 2007-0862-MWD-E on January 17, 2008 assessing \$9,570 in administrative penalties with \$1,914 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seven Sanders Companies, Inc., Docket No. 2007-0868-MSW-E on January 17, 2008 assessing \$5,690 in administrative penalties with \$1,138 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Mayhew dba Wood Trail Water Supply, Docket No. 2007-0881-PWS-E on January 17, 2008 assessing \$312 in administrative penalties with \$62 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darryl Wheeler dba Magnolia Lake RV Park, Docket No. 2007-0883-PWS-E on January 17, 2008 assessing \$2,160 in administrative penalties with \$432 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ATC Leasing Company LLC, Docket No. 2007-0886-PST-E on January 17, 2008 assessing \$11,250 in administrative penalties with \$2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5833, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Destroyers, Inc., Docket No. 2007-0922-AIR-E on January 17, 2008 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Farah Chaudhry dba Country Boy 2, Docket No. 2007-0933-PST-E on January 17, 2008 assessing \$3,750 in administrative penalties with \$750 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 Chatt Water Supply Corporation, Docket No. 2007-0934-PWS-E on January 17, 2008 assessing \$525 in administrative penalties with \$105 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A.K. Mittal dba Wes Texas Family Dining, Docket No. 2007-0946-PWS-E on January 17, 2008 assessing \$249 in administrative penalties with \$49 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rushing Paving Company, Ltd., Docket No. 2007-0947-AIR-E on January 17, 2008 assessing \$2,675 in administrative penalties with \$535 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2007-0954-PWS-E on January 17, 2008 assessing \$1,490 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2007-0989-AIR-E on January 17, 2008 assessing \$64,923 in administrative penalties with \$12,984 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nederland, Docket No. 2007-0994-MWD-E on January 17, 2008 assessing \$13,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lindsey Contractors, Inc., Docket No. 2007-1036-WQ-E on January 17, 2008 assessing \$6,000 in administrative penalties with \$1,200 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 R.C. Smith Companies, Ltd., Docket No. 2007-1037-MSW-E on January 17, 2008 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia Mckaughan, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I.L.P., Docket No. 2007-1051-PWS-E on January 17, 2008 assessing \$2,835 in administrative penalties with \$567 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy, Docket No. 2007-1057-AGR-E on January 17, 2008 assessing \$2,320 in administrative penalties with \$464 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I.L.P., Docket No. 2007-1072-PWS-E on January 17, 2008 assessing \$1,417 in administrative penalties with \$283 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Woodsboro, Docket No. 2007-1081-MWD-E on January 17, 2008 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fiberglass Specialties, Inc., Docket No. 2007-1094-AIR-E on January 17, 2008 assessing \$770 in administrative penalties with \$154 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Dodier, Docket No. 2007-1103-PST-E on January 17, 2008 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2007-1139-AIR-E on January 17, 2008 assessing \$7,750 in administrative penalties with \$1,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stephen P. Fey, Docket No. 2007-1167-LII-E on January 17, 2008 assessing \$500 in administrative penalties with \$100 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 Texas Petrochemicals LP, Docket No. 2007-1510-AIR-E on January 17, 2008 assessing \$10,266 in administrative penalties with \$2,053 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.

A field citation was entered regarding Cliff J. Chambers, Docket No. 2007-1396-OSI-E on January 17, 2008 assessing \$175 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sandra L. Hales, Docket No. 2007-1364-WOC-E on January 17, 2008 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Earth Haulers, Inc., Docket No. 2007-1362-WQ-E on January 17, 2008 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Chico Auto Parts & Service, Inc., Docket No. 2006-0901-MLM-E on January 17, 2008 assessing \$7,350 in administrative penalties.

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.

TRD-200800539

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 30, 2008



## Notice of a Proposed Amendment and Renewal of Two General Permits

### GENERAL PERMIT TXG830000:

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew a general permit (Texas Pollutant Discharge Elimination System Permit No. TXG830000) authorizing the discharge of water contaminated by petroleum fuel or petroleum substances into or adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Section 26.040 of the Texas Water Code.

**PROPOSED GENERAL PERMIT.** The Executive Director has prepared a draft renewal with amendments of an existing general permit that authorizes the discharge of water contaminated by petroleum fuel or petroleum substances. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The Executive Director proposes to require regulated dischargers to submit a Notice of Intent (NOI) to obtain authorization for some discharges.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at [http://www.tceq.state.tx.us/permitting/water\\_quality/wastewater/general/WQ\\_general\\_permits.html](http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/WQ_general_permits.html).

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

**Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date this notice is published in the Texas Register.**

**APPROVAL PROCESS.** After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when

the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. **This draft permit was previously noticed and the initial comment period ended on June 18, 2007. The comments received during the initial comment period will also be addressed in the response.** The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commissioner's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

#### **GENERAL PERMIT WQG200000:**

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew a general permit (TCEQ Permit No. WQG200000) authorizing the disposal of wastewater generated by manure compost operations adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Section 26.040 of the Texas Water Code.

**PROPOSED GENERAL PERMIT.** The Executive Director has prepared a draft renewal with amendments of an existing general permit that authorizes the disposal of wastewater generated by manure compost operations. The Executive Director proposes to require regulated facilities to submit a Notice of Intent (NOI) to obtain authorization for disposal.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at [http://www.tceq.state.tx.us/permitting/water\\_quality/wastewater/general/WQ\\_general\\_permits.html](http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/WQ_general_permits.html).

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

**Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date this notice is published in the *Texas Register*.**

**APPROVAL PROCESS.** After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. **This draft permit was previously noticed and the ini-**

**tial comment period ended on September 17, 2007.** The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

#### **GENERAL INFORMATION:**

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for a specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for the specific general permit.

**INFORMATION.** If you need more information about these general permits or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at: [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained by calling the TCEQ's Water Quality Division, Industrial Permits Team, at (512) 239-4671.

Si desea información en Español, puede llamar 1-800-687-4040.

TRD-200800360

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 28, 2008



#### **Notice of Availability of the Draft January 2008 Update to the Water Quality Management Plan for the State of Texas**

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2008 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft January 2008 WQMP update may be found on the commission's Web site located at [http://www.tceq.state.tx.us/nav/eq/eq\\_wqmp.html](http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 10, 2008. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at [nvignali@tceq.state.tx.us](mailto:nvignali@tceq.state.tx.us).

TRD-200800473

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 29, 2008



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 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. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 10, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 10, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Bradley S. McClure and Heather L. McClure; DOCKET NUMBER: 2006-0921-MSW-E; TCEQ ID NUMBER: RN104899166; LOCATION: 261 Bronco Drive, Abilene, Taylor County, Texas; TYPE OF FACILITY: tire transporter service; RULES VIOLATED: 30 TAC §328.60(a) and Texas Health and Safety Code (THSC), §361.112(a), by failing to obtain a tire storage site registration as required; 30 TAC §328.58(f)(1) and (2) and §328.57(c)(2), by failing to provide documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires and by failing to maintain complete and accurate manifests; and 30 TAC §328.54(d), by failing to have a trailer used for transporting used or scrap tires properly identified; PENALTY: \$2,005; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512)

239-1320; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Centurion Pipeline L.P.; DOCKET NUMBER: 2006-0984-AIR-E; TCEQ ID NUMBER: RN100216456; LOCATION: 2200 East County Road 90, Midland, Midland County, Texas; TYPE OF FACILITY: tank farm; RULES VIOLATED: 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit deviation reports for the reporting periods of February 1 - June 12, 2005 and June 13 - December 12, 2006; and 30 TAC §122.146(2) and THSC, §382.085(b), by failing to timely submit the annual permit compliance certifications for the February 1, 2004 - January 31, 2005 and June 13, 2005 - June 12, 2006 compliance periods; PENALTY: \$7,650; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(3) COMPANY: Circle K Stores, Inc.; DOCKET NUMBER: 2006-1312-AIR-E; TCEQ ID NUMBER: RN102777497; LOCATION: 1500 George Dieter Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULES VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum 7.0 pounds per square inch absolute Reid Vapor Pressure requirements during the control period of June 1 - September 16, 2006; PENALTY: \$1,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: Don Pressly Jr.; DOCKET NUMBER: 2006-2099-PST-E; TCEQ ID NUMBER: RN101555738; LOCATION: 4009 Lee Street, Greenville, Hunt County, Texas; TYPE OF FACILITY: temporarily out-of-service petroleum storage tank facility; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing underground storage tank system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$8,400; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-0875-AIR-E; TCEQ ID NUMBER: RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County, Texas; TYPE OF FACILITY: oil refining and supply company; RULES VIOLATED: 30 TAC §116.715(a), THSC, §382.085(b), and Flexible Permit Number 18287, Special Condition Number 1, by failing to prevent an avoidable emissions event in the CLEU3 on February 19, 2006 that lasted five minutes, releasing 9,090 pounds of the highly reactive volatile organic compound ethylene; PENALTY: \$10,000; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: K. B. Master Cleaners, Inc. dba KB Master Cleaners; DOCKET NUMBER: 2006-1408-DCL-E; TCEQ ID NUMBER: RN104995139; LOCATION: 15210 Spring Cypress Road, Suite A, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and Texas Water Code, §5.702, by failing to pay outstanding dry cleaning fees and associated late fees for TCEQ Financial Account Number 24003847 for Fiscal Years 2004 - 2006; PENALTY: \$1,185; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional

Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Walnut Creek Special Utility District; DOCKET NUMBER: 2007-0782-PWS-E; TCEQ ID NUMBER: RN101190056; LOCATION: 1150 Highway 199, Springtown, Parker County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(e)(1) and (2) and §290.45(b)(2)(B), THSC, §341.0315(c), and Agreed Order Docket Number 2004-0494-PWS-E, Ordering Provision 2.a.i., by failing to provide adequate production capacity and treatment plant capacity for the retail and wholesale connections under normal rated design flow; PENALTY: \$2,000; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Wilke Tire Service, Inc.; DOCKET NUMBER: 2006-2059-MSW-E; TCEQ ID NUMBER: RN104150289; LOCATION: 1202 South Port Avenue, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: tire maintenance shop that generates and transports scrap tires; RULES VIOLATED: 30 TAC §328.56(d)(2) and THSC, §361.112(a), by failing to obtain a scrap tire storage registration required for generators who store more than 500 used or scrap tires on the ground; and 30 TAC §328.56(b), by failing to ensure that scrap tires or scrap tire pieces were transported to an authorized facility; PENALTY: \$5,250; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200800481

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 29, 2008



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 10, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 10, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cindy Henderson and Melvin Henderson; DOCKET NUMBER: 2007-1782-MLM-E; TCEQ ID NUMBER: RN105193940; LOCATION: 10491 Wingfield Drive, Lumberton, Hardin County, Texas; TYPE OF FACILITY: property that includes an unauthorized disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal waste; PENALTY: \$6,700; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: David P. Derdeyn; DOCKET NUMBER: 2007-0848-WOC-E; TCEQ ID NUMBER: RN103856449; LOCATION: 509 Tejas Road, Jefferson, Marion County, Texas; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §30.381(b) and §30.5(a) and Texas Water Code (TWC), §37.003, by failing to obtain a valid PWS operator license prior to performing process duties in the production, treatment, and distribution of public drinking water; PENALTY: \$1,875; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Joseph Sandoval dba Plaza Mobile Home Park; DOCKET NUMBER: 2006-0531-MLM-E; TCEQ ID NUMBER: RN104942107; LOCATION: 811 Corrinne Drive, San Antonio, Bexar County, Texas; TYPE OF FACILITY: PWS; RULES VIOLATED: 30 TAC §291.101(a) and TWC, §13.242(a), by failing to obtain a certificate of convenience and necessity from the commission prior to rendering retail water service to the public; 30 TAC §291.21(a) and TWC, §13.190, by failing to obtain an approved tariff from the commission prior to demanding and collecting monetary compensation for providing retail water and wastewater service; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling of the PWS and by failing to provide public notification of the failure to conduct monthly bacteriological sampling during the months of May and June - October 2006; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 90150552; PENALTY: \$3,207; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Joseph Yarbrough; DOCKET NUMBER: 2005-0463-AIR-E; TCEQ ID NUMBER: RN104384649; LOCATION: 1425 Canyon Road, Graham, Young County, Texas; TYPE OF FACILITY: residential property; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general outdoor burning prohibitions by burning metal panels, metal siding, couch springs, a television picture tube, wire, metal screens, pipes, and other metal objects at the site; PENALTY: \$1,050; STAFF ATTORNEY:

Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Royal Superior Corporation dba 1.25 Expert Cleaners dba Super Cleaner and dba Super Cleaners aka 1.25 Expert Cleaners; DOCKET NUMBER: 2006-1410-DCL-E; TCEQ ID NUMBERS: RN103957726, RN103957809, RN103955894, RN103955902, and RN100559566; LOCATIONS: 8959 Westheimer Road, 10510B Beechnut Street, 5858 South Gessner Drive, Suite 140, 5713 Fondren Road, and 6569 West Bellfort Street, Houston, Harris County, Texas; TYPE OF FACILITIES: dry cleaning and/or drop station facilities; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to the TCEQ for a dry cleaner and/or drop station facility for all of the facilities; PENALTY: \$5,948; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: Triple A Dump Truck Service, L.L.C.; DOCKET NUMBER: 2006-0076-MSW-E; TCEQ ID NUMBER: RN101566120; LOCATION: 4 1/2 miles north on Western Road, Hidalgo County, Texas; TYPE OF FACILITY: dump truck and solid waste transport service; RULES VIOLATED: 30 TAC §330.15(c) and §330.103(b), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$4,200; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Troy Brown; DOCKET NUMBER: 2007-0982-PST-E; TCEQ ID NUMBER: RN101891877; LOCATION: 2162 United States Highway 259 South, Dianna, Upshur County, Texas; TYPE OF FACILITY: out-of-service gasoline station; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four underground storage tanks for which any applicable component of the system is not brought into timely compliance with the upgrade requirements and by failing to maintain all piping, pump, manways, tank access points, and auxiliary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information within 30 days from the date of the occurrence of the change or addition; PENALTY: \$8,925; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200800482

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 29, 2008



#### Notice of Water Quality Applications

The following notices were issued during the period of January 10, 2008 through January 31, 2008.

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

A K INTERESTS HUNTERWOOD LP has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011066001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located at 5830 South Lake Houston Parkway approximately 1.5 miles south/southeast of the intersection of Farm-to-Market Road 526 and U.S. Highway 90 and approximately 10.5 miles northeast of the Harris County courthouse in downtown Houston in Harris County, Texas.

AUC GROUP LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed TPDES Permit No. WQ0014844001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility will be located approximately 600 feet west of the intersection of Beau Rue Street and State Highway 6 in Galveston County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CALHOUN COUNTY NAVIGATION DISTRICT which operates the E S Joslin Power Station, a steam electric power generation facility, has applied for a renewal of TPDES Permit No. WQ0001303000, which authorizes the discharge of once through cooling water and previously monitored effluents (PMEs) (low volume wastewater (consisting of demineralizer regeneration wastes, boiler blowdown, floor and area drains), metal cleaning wastes, chemical metal cleaning waste, storm water runoff, and PME (treated domestic wastewater from Outfall 201) from Outfall 101) at a daily average flow not to exceed 231,000,000 gallons per day via Outfall 001. The facility is located approximately 1.5 miles south of State Highway 35, south of the City of Point Comfort, Calhoun County, Texas

CITY OF MCLEAN has applied to the TCEQ for a major amendment to Permit No. WQ0010354001 to relocate the irrigation site and to increase the number of acres irrigated from 55 to 63.5 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day via surface irrigation of 55 acres of non-public access agricultural land. The wastewater treatment facility and disposal site are located southeast of the intersection of Interstate Highway 40 and Farm-to-Market Road 3143 in Gray County, Texas.

CITY OF TEAGUE has applied to the TCEQ for a new permit, proposed TPDES Permit No. WQ0010300003, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility was previously permitted under TPDES Permit No. 10300-002 which expired on February 1, 2007. The facility is located approximately 3000 feet east of the intersection of U.S. Highway 84 and Farm-to-Market Road 1367 in Freestone County, Texas.

ELI GRAVRIEL SASSON has applied for a new permit, proposed TPDES Permit No. WQ0014830001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility was previously permitted under TPDES Permit No. 11414-001 which expired May 1, 2007. The facility is located at 14115 Farm-to-Market Road 529 approximately 1.5 miles southeast of the intersection of State Highway 6 and Farm-to-Market Road 529, northwest of the City of Houston in Harris County, Texas.

GREENSPORT/SHIP CHANNEL PARTNERS LP which operates the Greens Port Industrial Park Facility, has applied for a renewal of TPDES Permit No. WQ0000509000, which authorizes the discharge of treated domestic sewage effluent at a daily average flow not to exceed 360,000 gallons per day via Outfall 003; and storm water on an intermittent and flow variable basis via Outfall 009. The facility is located 13609 Industrial Road, on a tract of land bounded on the north and east by Industrial Road and on the south by the Houston Ship Channel in the City of Houston, Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 86 has applied for a renewal of TPDES Permit No. WQ0012065001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 0.40 mile south of the intersection of Farm-to-Market Road 1960 and Ella Boulevard (formerly Medberry Road) in Harris County, Texas.

HARRIS COUNTY UTILITY DISTRICT NO 16 has applied for a renewal of TPDES Permit No. WQ0012614001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located 2,000 feet north of Hardy Road on Fernbush Dr. in American Plaza and approximately one mile north of the intersection of Hardy Road and Farrell Road Sub-division in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010104001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,350,000 gallons per day. The facility is located at 611 Avenue E at the west end of Avenue E on the east shoreline of White's Lake in the Community of Highlands in Harris County, Texas.

HOUSTON AIRPORT HOSPITALITY LP has applied for a renewal of TPDES Permit No. WQ0014066001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located on the southeast corner on North Belt Drive and John F Kennedy Boulevard, south of the Houston Intercontinental Airport in Harris County, Texas.

J&S WATER COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0012382001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 3,300 feet west from the bridge where Rothwood Road crosses Spring Creek in Harris County, Texas.

LINDA DIANNE HARTZOG has applied for a renewal of TPDES Permit No. WQ0012918001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,600 gallons per day. The plant site is located 2.1 miles east of the intersection of Interstate Highway 45 and Gulf Bank Road, at 909 Gulf Bank Road in Harris County, Texas.

MARTIN OPERATING PARTNERSHIP LP AND MARTIN PRODUCT SALES LLC which operates the Stanolind Cut Terminal, a storage and distribution facility for molten sulfur, sulfuric acid, asphalt/fuel oil #6, crude oil, and diesel fuel, has applied to for a major amendment to TPDES Permit No. WQ0004074000 to authorize the addition of process wash water at Outfall 001; and to remove storm water runoff at Outfall 001. The current permit authorizes the discharge of non-contact cooling water, water softener wastewater, boiler blowdown, and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located at Number 10 Sulfur Plant Road, 0.7 miles east of the interchange of State Highway 380 and U.S. Route 69, southeast of the City of Beaumont, Jefferson County, Texas.

MIRAGE STOP INC which operates the Mirage Stop Plant, has applied for a renewal of TPDES Permit No. WQ0003517000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located on the northwest corner of the intersection of Interstate Highway (IH) 10 and Magnolia Avenue, approximately 1.8 miles west of the intersection of IH 10 and the San Jacinto River in the City of Houston, Harris County, Texas.

MONTGOMERY COUNTY UTILITY DISTRICT NO 2 has applied for a major amendment to TPDES Permit No. WQ0011271001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 550,000 gallons per day and change the outfall location. The facility is located on the east side of Lake Conroe, immediately south of Farm-to-Market Road 830 and approximately 500 feet east of Kingston Cove Lane in Montgomery County, Texas.

PETROLEUM COKE GRINDING INC which receives, stores, grinds, and ships petroleum coke, has applied for a renewal of TPDES Permit No. WQ0001021000, which authorizes the discharge of process area storm water and cooling tower blowdown on an intermittent and flow variable basis via Outfalls 001 and 003; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 6203 Industrial Way, 0.5 miles north of Navigation Boulevard at the termination of Industrial Way, on Buffalo Bayou in the City of Houston, Harris County, Texas.

ROYALWOOD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010608002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 260,000 gallons per day. The facility is located immediately west of Uvalde Road approximately 6,500 feet south of the intersection of Uvalde Road and U.S. Highway 90 in Harris County, Texas.

SABINE RIVER AUTHORITY OF TEXAS has applied for a major amendment to TCEQ Permit No. WQ0013857001 to authorize an increase in the disposal of treated domestic wastewater from a daily average flow not to exceed 12,500 gallons per day to a daily average flow not to exceed 30,000 gallons per day. The applicant is also requesting authorization to change the method of disposal from irrigation of 3 acres of grassland to direct discharge into Lake Tawakoni. The facility is located approximately 3,500 feet south-southeast of Spring Point and approximately 4,000 feet northwest of Autumn Point near White Deer Reach on the southwest shore of Lake Tawakoni in Hunt County, Texas.

SAN ANTONIO RIVER AUTHORITY has applied for a major amendment to TPDES Permit No. WQ0010749004 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 2,000,000 gallons per day to an annual average flow not to exceed 3,500,000 gallons per day. The current permit also authorizes the land application of sewage sludge for beneficial use on 89.5 acres. The draft permit authorizes the land application of sewage sludge for beneficial use on 63.1 acres. The facility is located at 1280 Farm-to-Market Road 1516 South, approximately 3,500 feet south-southeast of the intersection of Interstate Highway 10 and Farm-to-Market Road 1516 in Bexar County, Texas.

SMITH INTERNATIONAL INC AND SMITH INTERNATIONAL INDUSTRIAL SUBDIVISION WATER SUPPLY AND SEWER SERVICES CORPORATION which operates a plant that manufactures equipment and machinery for use in the oil and gas industry, has applied for a renewal of TPDES Permit No. WQ0002453000, which authorizes the discharge of treated process water (heat treatment



wastewater, charging table sump water, and steam cleaning wastewater), utility wastewater (cooling tower blowdown, boiler blowdown, air conditioning condensate), domestic wastewater, and laboratory wastewater at a daily average flow not to exceed 150,000 gallons per day via Outfall 001. The facility is located at 16740 Hardy Street, approximately 3500 feet south of the intersection of Hardy Street and Rankin Road, in the City of Houston, Harris County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014517001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility will be located approximately 1/2 mile west of the intersection of Farm-to-Market Road 2978 and Spring Creek, on the south side of Spring Creek in Harris County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014606001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.24 million gallons per day. The facility is located 3,550 feet northeast of the intersection of Farm-to-Market Road 2920 and Stuebner Airline Road in Harris County, Texas.

THE CITY OF AUSTIN has applied for a new permit, proposed TPDES Permit No. WQ0010543014 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day in the final phase. The facility will be located approximately three miles east of Farm-to-Market Road 973, approximately one mile north of Farm-to-Market Road 969 and approximately 1.7 miles west of Bureson Road in Travis County, Texas.

TRIGEANT LTD which operates a petroleum refinery, has applied for a major amendment without renewal to TPDES Permit No. WQ0002720000 to increase the total zinc effluent limitations at Outfall 001, based on new information regarding the width of the receiving waters at the point of discharge. The daily average total zinc limitation has been increased from 0.082 lbs/day (0.084 mg/l) to 0.36 lbs/day (0.16 mg/l) and the daily maximum has been increased from 0.12 lbs/day (0.177 mg/l) to 0.76 lbs/day (0.34 mg/l). The current permit authorizes a discharge of treated process wastewater, treated storm water, water softener blowdown, cooling tower blowdown, boiler blowdown, and hydrostatic test water at a daily average flow not to exceed 120,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 6600 Up River Road, on the north side of Up River Road approximately one-half mile west of the intersection of Up River Road and Valero Way, northwest of the City of Corpus Christi, Nueces County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

WESTPHALIA WATER & SEWER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014382001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.02 million gallons per day. The facility is located adjacent to the east side of State Highway 320, approximately 1,500 feet south of the intersection of Farm-to-Market Road 431 and State Highway 320 near the community of Westphalia in Falls County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800537

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 30, 2008



## Notice of Water Rights Application

Notice issued January 25, 2008.

APPLICATION NO. 12245; Dean Word Company, Ltd., Applicant, P.O. Box 310330, New Braunfels, Texas 78131, has applied for a temporary water use permit to divert and use not to exceed 5 acre-feet of water from Buckner's Creek, Colorado River Basin, within a period of 15 months for industrial purposes in Fayette County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 13, 2007, and additional information and fees were received on October 29, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 16, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by February 15, 2008.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "(I/we) request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ), Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800538

LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 30, 2008

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**Texas Facilities Commission**

**Request for Proposals #303-8-10962**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission announces the issuance of Request for Proposals (RFP) #303-8-10962. TFC seeks a Five (5) year lease of approximately 5,638 square feet of office space in the city of Livingston, Polk County, Texas.

The deadline for questions is February 15, 2008 and the deadline for proposals is February 25, 2008 at 3:00 p.m. The award date is March 19, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/1380/bid\\_show.cfm?bidid=74868](http://esbd.cpa.state.tx.us/1380/bid_show.cfm?bidid=74868).

TRD-200800520  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 30, 2008

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**Request for Proposals #303-8-10985**

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-8-10985. TFC seeks a 5 year lease of approximately 8,005 square feet of office space in McAllen, Hidalgo, Texas.

The deadline for questions is February 15, 2008 and the deadline for proposals is February 26, 2008 at 3:00 p.m. The award date is March 18, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=74797](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74797).

TRD-200800348  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 24, 2008

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**Request for Proposals #303-8-10993**

The Texas Facilities Commission (TFC), on behalf of the General Land Office (GLO), announces the issuance of Request for Proposals (RFP)

#303-8-10993. TFC seeks a five (5) year lease of approximately 8,000 square feet of warehouse space in Austin, Travis, Texas.

The deadline for questions is February 15, 2008 and the deadline for proposals is February 28, 2008 at 3:00 p.m. The award date is March 19, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=74892](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74892).

TRD-200800528  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 30, 2008

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**Request for Proposals #303-8-10999**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission announces the issuance of Request for Proposals (RFP) #303-8-10999. TFC seeks a Five (5) year lease of approximately 4,648 square feet of office space in the cities of Brookshire, or Hempstead or the vicinity of either city, Waller County, Texas.

The deadline for questions is February 15, 2008 and the deadline for proposals is February 25, 2008 at 3:00 p.m. The award date is March 1, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/1380/bid\\_show.cfm?bidid=74866](http://esbd.cpa.state.tx.us/1380/bid_show.cfm?bidid=74866).

TRD-200800516  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 29, 2008

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**Request for Proposals #303-8-11007**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-8-11007. TFC seeks a five (5) or ten (10) year lease of approximately 131,000 square feet of Call Center/Office space in San Antonio, Bexar, Texas.

The deadline for questions is February 28, 2008 and the deadline for proposals is March 28, 2008 at 3:00 p.m. The award date is April 1, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=74854](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74854).

TRD-200800468

Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 28, 2008



#### Request for Proposals #303-8-11031

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-8-11031. TFC seeks a five (5) year lease of approximately 4,907 square feet of office space in San Antonio, Bexar, Texas.

The deadline for questions is February 15, 2008 and the deadline for proposals is February 29, 2008 at 3:00 p.m. The award date is April 1, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=74888](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74888).

TRD-200800527

Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 30, 2008



#### Request for Proposals #303-8-11032

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-8-11032. TFC seeks a five (5) year lease of approximately 2,396 square feet of office space in McAllen, Hidalgo, Texas.

The deadline for questions is February 15, 2008 and the deadline for proposals is February 29, 2008 at 3:00 p.m. The award date is April 1, 2008. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=74889](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74889).

TRD-200800525

Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: January 30, 2008



## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Provider Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public rate hearing to receive public comment on proposed Medicaid payment rates for Institutions for Mental Diseases (IMD). These programs are operated by the Health and Human Services Commission (HHSC). The rate hearing will be held on Wednesday, February 20, 2008, at 9:00 a.m. in the Palo Duro Canyon Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), §355.201(e) - (f) and Chapter 32 of the Human Resources Code, §32.0282, which require public hearings on proposed payment rates for medical assistance programs.

**Proposal.** The reimbursement methodology for IMD facilities requires that the facility rates be determined biennially. These rates are based on cost reports submitted by the facilities and a cap rate determined by inflating the initial reimbursement rates by the Market Basket Forecast provided by CMS. The proposed payments will be effective September 1, 2007.

**Methodology and justification.** The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.761 for IMDs and is in compliance with Title XIX of the Social Security Act, as amended.

**Written Comments.** Written comments regarding the proposed reimbursement methodology may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Amber Lovett, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by email to [amber.lovett@hhsc.state.tx.us](mailto:amber.lovett@hhsc.state.tx.us). Express mail can be sent, or written comments can be hand delivered, to Ms. Lovett, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Lovett at (512) 491-1998.

**Briefing Package.** Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Lovett at (512) 491-1371, or by email to [amber.lovett@hhsc.state.tx.us](mailto:amber.lovett@hhsc.state.tx.us), or HHSC Rate Analysis, MC H-400 P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 by February 15, 2008, so appropriate arrangements can be made.

TRD-200800441

Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: January 28, 2008



#### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Deaf Blindness and Multiple Disabilities (DBMD) program waiver, which is a Medicaid Home and Community-Based Services waiver under the authority of §1915(c) of the Social Security Act.

The current §1915(c) waiver is approved from March 1, 2003, to February 29, 2008. The DBMD program serves individuals 18 years and older who are legally blind; have a chronic, severe hearing impairment; and have a third disability that limits independent functioning. The program serves individuals in the community who would otherwise require care in an Intermediate Care Facility for the Mentally Retarded and Related Conditions (ICF/MR).

This amendment updates utilization for D and D' cost based upon the Annual Expenditure Report (CMS-372s) for Waiver Year 4, updates cost per unit by taking the weighted average for state fiscal years 2007 and 2008, and expresses units as rounded annual units per client; revises the waiver to indicate that individuals will not be denied eligibility because the estimated cost of waiver services exceeds the average cost of institutional services; and adjusts the financial documentation to reflect the new reimbursement rates.

HHSC is requesting that the waiver amendment be approved for a seven-month period beginning September 1, 2007, through February 29, 2008. This amendment maintains cost neutrality of service-costs for federal fiscal years 2007 through 2008.

To obtain copies of the proposed waiver, interested parties may contact Carmen Samilpa-Hernandez, Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1128, fax (512) 491-1953, e-mail Carmen.Samilpa-Hernandez@hhsc.state.tx.us.

TRD-200800533

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 30, 2008



#### Public Notice of Intent

Texas Health and Human Service Commission (HHSC) announces its intent to submit a waiver renewal for the STAR Program (STAR) under the authority of §1915(b) of the Social Security Act.

The current 1915(b) waiver is approved from September 1, 2006, to August 31, 2008. The principle objectives of STAR are early intervention and improved access to quality care, resulting in improved health outcomes for Medicaid recipients who receive cash assistance (Temporary Assistance for Needy Families (TANF)), pregnant women and recipients with limited income with a special focus on prenatal and well-child care. Clients enrolled in STAR receive all of the traditional Medicaid benefits plus the added STAR benefits that include annual check-ups for adults, unlimited prescriptions for adults, no limit on necessary hospital days, and health education classes.

HHSC is requesting that the waiver application be approved for a two-year period beginning July 1, 2008, and ending June 30, 2010. This waiver application is expected to result in cost savings for the state for each year in the two-year period covering 2008 through 2010.

The proposed waiver is estimated to result in total cost savings of approximately (\$545 million), with approximately (\$324 million) cost savings in federal funds and (\$221 million) cost savings in state general revenue. First year savings are approximately (\$257 million), with approximately (\$153 million) cost savings in federal funds and (\$104 million) in state general revenue. Second year savings are approximately (\$288 million), with approximately (\$171 million) cost savings in federal funds and (\$117 million) in state general revenue.

To obtain additional information or copies of the waiver application, interested parties may contact Carmen Samilpa-Hernandez by mail

at Texas Health and Human Services Commission, P.O. Box 13247, H-600, Austin, Texas 78711; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.samilpa-hernandez@hhsc.state.tx.us.

TRD-200800339

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 24, 2008



## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

#### Single Family Mortgage Revenue and Refunding Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 221 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on March 10, 2008, with respect to an issue of tax-exempt single family mortgage revenue bonds to be issued in one or more series in an aggregate face amount of not more than \$55,000,000 (the "New Money Bonds") and an issue of tax-exempt single family mortgage revenue refunding bonds to be issued in one or more series in an aggregate face amount of not more than \$55,000,000 (the "Refunding Bonds" and together with the New Money Bonds, collectively, the "Bonds").

A portion of the proceeds of the New Money Bonds will be used directly to make single family residential mortgage loans. A portion of the proceeds of the Refunding Bonds will be used to refund all or a portion of the Department's outstanding Single-Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series A, thereby making funds available to make additional single family residential mortgage loans. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas, and are expected to be in an aggregate estimated amount of \$110,000,000.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income, who have not owned a principal residence during the preceding three years (except in certain cases permitted under applicable provisions of the Internal Revenue Code). Further, residences financed with loans under the programs generally will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; telephone (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

Texas Department of Housing and Community Affairs Website:  
www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Bonds.

TRD-200800462  
Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 28, 2008



#### Notice of Public Hearing

##### **Multifamily Housing Revenue Bonds (Costa Del Rey) Series 2008**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Milne Elementary School, 7800 Portal, Houston, Harris County, Texas 77071, at 6:00 p.m. on February 27, 2008, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Costa Del Rey, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development located at approximately 11523, 11527 and 11543 South Gessner Drive, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; telephone (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512)

475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200800463  
Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 28, 2008



#### **Texas Department of Housing and Community Affairs**

##### Notice of Public Hearing

##### **Multifamily Housing Revenue Bonds (Lakeside Apartments) Series 2008**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Simms Elementary School, 529 N. Westward, Texas City, Texas 77591, at 6:00 p.m. on February 28, 2008, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Palmer at Lakeside, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development located at approximately the 7500 block of Palmer Highway, Galveston County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; telephone (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200800479  
Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 29, 2008



#### **Texas Department of Housing and Community Affairs**

##### Notice of Public Hearing

## **Multifamily Housing Revenue Bonds (Broadway Place Apartments) Series 2008**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Regency Place Elementary School, 2635 Bitters Road, San Antonio, Texas, 78217, at 6:00 p.m. on February 26, 2008, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$11,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Summit Broadway Place Apartments, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating and equipping a multifamily housing development (the "Development") described as follows: approximately 215-unit multifamily residential rental development located at approximately 9110 Broadway Street, Bexar County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; telephone (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200800480

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 29, 2008

## **University of Houston System**

### **Notice of Request for Proposal**

In compliance with Chapter 2254, Texas Government Code, the University of Houston System (System) furnishes this notice of request for proposal. The University of Houston System seeks proposals from qualified consulting firms to provide advice and consultation in the areas of Enrollment Services. This advice and consultation is authorized and supported by the UH System Chancellor/UH President as being of substantial need and necessary in performing the needed evaluation. Interested parties are invited to express their interest and describe their capabilities on or before March 8, 2008.

The term of the contract is to be for a one (1) year period beginning on or about March 15, 2008 and ending March 14, 2009 subject to one (1) year renewal option. Further technical information can be obtained from Dennis A. Fouty at (832) 842-4603. All proposals must be specific and must be responsive to the criteria set forth in this request.

**SCOPE OF WORK:** Consultant will review the current organizational structure used in all areas of Enrollment Services, specifically Admissions, Financial Aid, Registration and Records and specifically address the implementation of process improvements. Consultant shall: (1) Review current business practices for the Enrollment Services process that impact the delivery of services to the students. In order to complete the activities in this work group, the Consultant may complete the following: (A) interview Enrollment Services managers and supervisors to collect information necessary to document the current Enrollment Services processes; (B) conduct several work groups to examine in detail the practices that support how Enrollments Services applications, processes, and services are managed; and (C) create and trace the time line for these activities to determine how they are coordinated. (2) Consultant shall examine the student life-cycle of the Enrollment Services applicant, document current processes, and recommend best practices to streamline the overall system and procedures. During this review, the Consultant shall identify and document the following: (A) Identify the major Enrollment Services steps for the University and interview the staff in order to trace the steps currently a part of the enrollment process, (B) Prepare documentation that will capture the time line for the aforementioned steps in an effort to measure the effectiveness or the overall enrollment services system, (C) Provide work steps that will include creating documentation to reflect these procedures and examine how these procedures interact to create the overall processing steps while determining how all of the systems relate to each other and impact the overall delivery system for processing enrollment services to the University of Houston; and (D) Prepare recommendations for best practices to improve the overall delivery system for enrollment services. (3) Finally, consultant shall develop an open issues inventory that contains the policies, procedures, or other information that will need to be reviewed in order to determine future changes in the enrollment services processes by: (A) Consolidating issues that are raised during the interview and meeting processes to create an inventory that contains issues, policies, or procedures that need to be examined by the University of Houston in order to strengthen the overall efficiency of the enrollment service system and (B) create an Inventory that shall include, as a minimum, a classification for the type of issue and the area of the University that may need to address the open issue.

**INFORMATION ABOUT THE UNIVERSITY OF HOUSTON SYSTEM:** The University of Houston System is the state's only metropolitan higher education system, encompassing four universities and two multi-institution teaching centers. The universities include the University of Houston, a nationally recognized doctoral degree-granting, comprehensive research university; the University of Houston-Downtown, a four-year undergraduate university beginning limited expansion into graduate programs; and the University of Houston-Clear Lake and the University of Houston-Victoria, both upper division and master's-level institutions. The centers include the UH System at Sugar Land in Fort Bend and the UH System at Cinco Ranch. In addition, the UH System includes KUHF-FM, Houston's National Public Radio and classical radio station, and KUHT-TV, the nation's first educational television station.

**GENERAL INSTRUCTIONS:** Submit one (1) original and two (2) copies of your proposal in a sealed envelope to: Dennis A. Fouty, Associate Vice Chancellor, University of Houston System, 221 Ezekiel Cullen Building, Houston, Texas 77204 before 3:00 p.m. March 8, 2008. The original shall be prepared on a word processor and formatted in at least 10-point-font that is clearly readable. The copies shall be of good, readable quality.

**COMPLIANCE WITH RFP REQUIREMENTS:** By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. The System, at its sole discretion, may disqualify a Proposal from consideration, if the System determines a Proposal is non-respon-

sive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

**SIGNATURE, CERTIFICATION OF PROPOSER:** The Proposal must be signed and dated by a representative of the Proposer who is authorized to bind the Proposer to the terms and conditions contained in this RFP and to compliance with the information submitted in the proposal. Each Proposer submitting a Proposal certifies to both: (i) the completeness, veracity, and accuracy of the information provided in the Proposal and (ii) the authority of the individual whose signature appears on the Proposal to bind the Proposer to the terms and conditions set for in this RFP. Proposals submitted without the required signature shall be disqualified.

**OWNERSHIP OF PROPOSALS:** All Proposals become the physical property of the System upon receipt.

**USE, DISCLOSURE OF INFORMATION:** Proposers acknowledge that the System is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a Proposal includes proprietary data, trade secrets, or information the Proposer wishes to except from public disclosure, then the Proposer must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL--PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the Proposer as proprietary will be used by the System only for purposes related to or arising out of the: (i) evaluation of Proposals; (ii) selection of a Proposer pursuant to the RFP process; and (iii) negotiation and execution of a Contract, if any, with the Proposer selected.

**RESCISSION OF PROPOSAL:** A Proposal can be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals pursuant to a written request sent to the Treasurer.

**REQUEST FOR CLARIFICATION:** The System reserves the right to request clarification of any information contained in a Proposal.

**COMMUNICATIONS WITH SYSTEM PERSONNEL:** Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing System business operations, Proposers are expressly and absolutely prohibited from engaging in communications with System personnel who are involved in any manner in the review and/or evaluation of the Proposals; selection of a Proposer; and/or negotiations or formalization of a Contract. If any Proposer engages in conduct or communications that the System determines are contrary to the prohibitions set forth in this section, the System may, at its sole discretion, disqualify the Proposer and withdraw the Proposer's Proposal from consideration.

**EVALUATION OF PROPOSALS:** The Proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are: (i) incomplete, (ii) not properly certified and signed, (iii) not in the required format, or (iv) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by the System.

**PROVISION OF INFORMATION:** Each Proposer must provide current, accurate, complete information about all of the following in support of its Proposal (please coordinate numbers with responses): (A) Business, Financial Information: (i) Name, address, telephone number, and title of the person(s) whom the System can contact about the Proposal; (ii) State of Texas corporate filings, DBA name, registration and tax identification number; (iii) Name(s) of owner(s) or partners or directors, as applicable; (B) Experience: (i) Provide an overview of your firm, including whether you would be considered a local, regional, or national firm and the demographics of your client base; (ii) Provide the total number of personnel employed by your firm, to include categorization by function; (iii) Provide name, title, and telephone num-

ber of each person who will be assigned to our account. The resumes of each of these employees must be included. Credentials illustrating the education, training, experience, and professional certification(s) of these personnel are also required; (iv) Provide a description of the current consulting load of the personnel to be assigned to our account; (C) References: Provide a list of three clients, preferably colleges/universities, for whom the Proposer has recently provided Services, including name of firm, contact person's name, title, address, telephone number, and scope of project; (D) Consulting Methodology: Describe in sufficient detail the methodology you will employ and tasks you will perform to achieve the goals of the project as set forth in the RFP; (E) Performance Timetable: Indicate the number of hours that you believe is necessary and appropriate for your firm to complete each of the roles as described in the RFP. Recommended time should be identified for each role identified in this RFP and totaled for all aspects of the project; (F) Fees: Provide a fee schedule for the various consulting services you will provide. Identify by title and amount any reimbursable expenses (e.g. travel costs); (G) Legal Information: Is your firm, or any professionals employed by your firm, currently a defendant in any criminal proceedings or under criminal investigation; or any administrative action, including state and or federal regulatory agency proceedings, which resulted in censure or the suspension or revocation of any licenses? If yes, please describe.

**DISCUSSIONS WITH PROPOSERS:** The System may conduct discussions and/or negotiations with any Proposer that appears to be eligible for award ("Eligible Proposer") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, the System will not disclose information derived from Proposals submitted by competing Proposers, except as and if law requires disclosure.

**MODIFICATION OF PROPOSALS:** All Eligible Proposers will be afforded the opportunity to submit best and final Proposals if: (a) negotiations with any other Proposer result in a material alteration to the RFP and (b) such material alteration has a cost consequence that could alter the Proposer's quotations regarding rates for Services.

**SELECTION OF PROPOSER:** The Proposer selected for award will be the Proposer whose Proposal, as presented in response to this RFP and as determined by the System in accordance with the evaluation criteria set forth in this RFP, to be the most advantageous to the System. Proposers acknowledge that the System is not bound to accept the lowest-priced Proposal.

**EVALUATION OF PROPOSALS:** Submission of a Proposal indicates the Proposer's acceptance of the evaluation process set forth in this RFP and the Proposer's acknowledgement that subjective judgments must be made by the System in regard to the evaluation process.

**CRITERIA FOR EVALUATION:** Evaluation of Proposals and award to the Selected Proposer will be based on the following factors, as weighted and listed as follows: (i) Demonstrated ability of the Proposer to fulfill current and predicted System needs (50%); (ii) Stability and success of the Proposer's business profile (40%); and (iii) Rates for Services quoted (10%).

**CONSIDERATION OF ADDITIONAL INFORMATION:** The System reserves the right to ask for and consider any additional information deemed beneficial to the System in evaluation of the Proposals.

**TERMINATION:** This Request for Proposal (RFP) in no manner obligates the University of Houston System to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston System and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston System reserves the right to

cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200800532

Brian S. Nelson

Associate General Counsel/Executive Director

University of Houston System

Filed: January 30, 2008

## Texas Lottery Commission

### Instant Game Number 1095 "Set for Life"

The Texas Lottery Commission filed for publication Instant Game Number 1095 "Set for Life". The document was published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9863). The sections regarding annuity payment options for the top prize amount were changed after the game procedure was published in the *Texas Register*. Sections 1.0.I, 2.0, 2.3.C and 2.3.D now read as follows:

#### 1.0 Name and Style of Game.

1. High-Tier Prize--A prize of \$1,000, \$2,500 or \$5,000/WK (\$5,000 per week not to exceed \$5,000,000).

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 "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If the player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a COIN SYMBOL, the player wins the PRIZE shown instantly. If the player reveals a STAR SYMBOL, the player wins 10 times the prize shown. If the player reveals a LIFE SYMBOL, the player wins \$5,000 a week (not to exceed \$5,000,000 total). No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.3 Procedure for Claiming Prizes.

C. To claim a "SET FOR LIFE" top level prize of \$5,000 per week, (not to exceed \$5,000,000 total), the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. When claiming a "SET FOR LIFE" Instant Game prize of \$5,000 per week, (not to exceed \$5,000,000 total), the claimant must choose one of the four (4) payment options for receiving the prize:

1. Weekly via direct deposit to the winner's account. With this plan, upon validation of the prize, 52 weekly payments of \$5,000, less any taxes and/or other offsets or mandatory withholdings required by law, will be made each Wednesday up to \$260,000 per year. Additional payment(s) may be made to reach the total maximum payment of \$5,000,000. \*NOTE: The investment is based on 52 weeks per year. Some years may have 53 weeks per year, however, only 52 weeks per year will be paid. On years with 53 weeks, no payment will be made on the last Wednesday in December.

2. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, an initial payment of \$21,674 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each year on the first business day of the month of the claim. A payment of \$21,666 less any taxes and/or other offsets or mandatory withholdings required by law, will be made on the first business day for the remaining eleven months of each year for a combined total of up to \$260,000 per year. Monthly payments will be made for a period 231 months with the final payment of \$16,660 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of \$5,000,000.

3. Quarterly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$65,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made four times a year on the first business day of the first month of each calendar quarter (January, April, July, October) for a total of \$260,000 per year. Quarterly payments will be made for approximately 19 years for a total of 77 quarters with the final quarterly payment of \$60,000 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of \$5,000,000.

4. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$260,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 19 years or a total of 19 annual payments. One additional payment of \$60,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made to reach the total maximum payment of \$5,000,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

TRD-200800338

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 23, 2008

## North Central Texas Council of Governments

### Request for Proposals for the City of Hurst Bellaire Area Sustainable Development Project

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.

The NCTCOG is requesting written proposals from consultant firm(s) to perform a housing and commercial market analysis and develop economic and land use strategies for re-development of an underutilized strip center and adjacent multi-family complex, in central Hurst, referred to as the Bellaire Sustainable Development Area. The project will guide short-term and long-term neighborhood-wide improvements in the project area, and secondarily serve as an example and catalyst for similar redevelopment along the Pipeline Road and Bedford-Euless Road corridors. Copies of the Request for Proposal (RFP) will be available beginning Friday, February 22, 2008.

#### Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, March 21, 2008, to Karla Weaver, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington,



Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

#### **Contract Award Procedures**

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### **Regulations**

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200800524

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: January 30, 2008



#### **Request for Proposals for the Evans & Rosedale Urban Village Project**

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.

The NCTCOG is requesting written proposals from consultant firm(s) to obtain technical services to develop a plan of action focused on design standards and guidelines which includes affordable new and infill housing options and the creation of a sustainable pedestrian-oriented urban neighborhood in the Evans & Rosedale Urban Village located in Fort Worth. Copies of the Request for Proposal (RFP) will be available beginning Friday, February 8, 2008.

#### **Due Date**

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, February 29, 2008, to Karla Weaver, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

#### **Contract Award Procedures**

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### **Regulations**

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49,

Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200800522

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: January 30, 2008



#### **Request for Proposals to Develop a Transit Oriented Development Plan in and Around the Richland Hills Trinity Railway Express Station**

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.

The NCTCOG is requesting written proposals from consultant firm(s) to develop a Transit Oriented Development Plan which will include the identification of short- and long-term strategies that can be implemented in Richland Hills to achieve sustainable development in and around the Richland Hills Trinity Railway Express (TRE) station. The planning services include the evaluation of the best methodology for mixed-use re-zoning of the property surrounding the TRE Station. Economic services would include presenting options regarding Public Improvement Districts (PID), Tax Increment Reinvestment Zones (TIRZ), and Neighborhood Empowerment Zones (NEZ). Copies of the Request for Proposals (RFP) will be available beginning Friday, February 15, 2008.

#### **Due Date**

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, March 14, 2008, to Karla Weaver, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

#### **Contract Award Procedures**

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### **Regulations**

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be

discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200800523

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: January 30, 2008

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on January 22, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35256 before the Public Utility Commission of Texas.

The requested amended CFA includes the expansion of the service area footprint to include the city limits of Pittsburg, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35256.

TRD-200800354

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 25, 2008

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on January 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35270 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of San Augustine, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35270.

TRD-200800501

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 29, 2008

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on January 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 35277 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipality of Kempner, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35277.

TRD-200800505

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 29, 2008

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on January 28, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35284 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the addition of the City of Frankston, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35284.

TRD-200800508

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 29, 2008

**Announcement of Application for a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on January 23, 2008, for a state-issued Certificate of Franchise Authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Advanta Technologies, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 35265 before the Public Utility Commission of Texas.

The CFA applicant requests to be a cable and video service provider within the City of Houston, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35265.

TRD-200800467  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2008



**Announcement of Application for State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on January 28, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of T-N-T Cable for a State-Issued Certificate of Franchise Authority, Project Number 35281 before the Public Utility Commission of Texas.

The requested CFA service area is unspecified.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35281.

TRD-200800507  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 24, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of MidAmerican Energy Company for Retail Electric Provider (REP) Certification, Docket Number 35278 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 15, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35278.

TRD-200800506  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



**Notice of Application for Amendment to Certificate of Operating Authority**

On January 18, 2008, AT&T Texas filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA certificate number 50005. Applicant intends to expand its service area to include the Embarq exchanges of Krum, Ponder, Rhome, Sanger, and Slidell; the Nortex Communications exchange of Valley View East; and the Verizon Southwest exchange of Pilot Point.

The Application: Application of AT&T for an Amendment to its Certificate of Operating Authority, Docket Number 35251.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 13, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35251.

TRD-200800352  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 25, 2008



**Notice of Application for Designation as an Eligible Telecommunications Carrier**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 18, 2008, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Texas RSA 7B3, L.P. d/b/a Peoples Wireless Services for Designation as an Eligible Telecommunications Carrier. Docket Number 35252.

The Application: The company is requesting ETC designation in the rural telephone company study area of Peoples Telephone Cooperative, Inc. in order to be eligible to receive support from the federal universal service support mechanism.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by February 28, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or 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 1-800-735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 35252.

TRD-200800353  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 25, 2008



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 24, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Baldwin County Internet/DSSI Service, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 35272 before the Public Utility Commission of Texas.

Applicant intends to provide optical services, T1-Proviante Line, and any high speed/bandwidth transport requested by the customer.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 13, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35272.

TRD-200800502  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 24, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Tele Circuit Network Corporation d/b/a Tele Circuit for a Service Provider Certificate of Operating Authority, Docket Number 35274 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance service.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas, Verizon Southwest, and Embark.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 13, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35274.

TRD-200800503  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



#### Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) an application on January 24, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for one thousand block in the Cypress, Texas rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 35276.

The Application: Southwestern Bell Telephone Company d/b/a AT&T Texas submitted an application to the PA for one thousand-block in the Cypress, Texas rate center in accordance with the current guidelines. The PA denied the request.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 13, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35276.

TRD-200800504  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



#### Notice of Application to Amend

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 25, 2008, to amend a certificate of convenience and necessity for a proposed transmission line in Liberty County, Texas.

Docket Style and Number: Application of Sam Houston Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed 138-kv Transmission Line for the Enstor Leaching and Gas Facility in Liberty County, Texas. Docket Number 34650.

The Application: The application of Sam Houston Electric Cooperative, Inc. (Sam Houston) for a proposed transmission line is designated

the Enstor 138-kV Transmission Line Project. Sam Houston is proposing construction of certain transmission facilities to provide service for a natural gas storage and transportation facility to be developed by Enstor at a location in Liberty County, Texas. The right-of-way distance for this project will be approximately 1.96 miles (preferred route). The estimated date to energize facilities is January 2009.

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 1-888-782-8477. The deadline for intervention in this proceeding is March 10, 2008. Hearing and speech-impaired individuals with text telephone (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 34650.

TRD-200800509  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



### Notice of Compliance Filing

Notice is given to the public of a compliance proceeding filed with the Public Utility Commission of Texas (commission) on January 23, 2008, pursuant to Public Utility Regulatory Act §14.001 and §36.203 and P.U.C. Substantive Rule §25.236.

Docket Style and Number: Compliance Filing of Entergy Texas, Inc. Regarding Jurisdictional Allocation of 2007 System Agreement Payments, Docket Number 35269.

The Application: Entergy Texas, Inc. (Entergy) made a compliance filing addressing the jurisdictional allocation of a certain bandwidth payment received by Entergy Gulf States, Inc. (EGSI) in 2007 as a result of its participation in the Entergy System Agreement implementing the Federal Energy Regulatory Commission decisions in Opinion Numbers 480 and 480-A. The payment was received in seven equal installments. Recently, EGSI filed to implement an interim fuel refund of fuel cost over-recoveries through September 2007. The parties in that proceeding propounded discovery regarding the nature of the 2007 bandwidth payment received by EGSI. Further, as part of a global settlement of Docket Number 34953 and Docket Number 34724 the parties agreed that a separate filing be made addressing the jurisdictional allocation of the 2007 bandwidth payment to EGSI. Specifically, Entergy's filing in the instant docket addresses a certain portion of its fuel expense which is charged to Texas retail customers taking service under Tariff FF. The Texas-jurisdictional portion of bandwidth payment received by EGSI was credited to fuel expense in the months in which the installments were received, June 2007 through December 2007.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or 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 correspondence should refer to Docket Number 35269.

TRD-200800356  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 25, 2008



### Request for Proposals

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for a person or entity to provide consulting and/or testifying expert services in connection with a contested case concerning abuse of market power.

The PUCT is responsible for monitoring market power associated with the generation and sale of electricity in Texas. Texas Utilities Code §39.157(a). The PUCT is assisted by a wholesale electric market monitor, known as the Independent Market Monitor (IMM). Texas Utilities Code §39.1515.

In 2006, the IMM conducted an investigation into the bidding behavior of Luminant, the power generation subsidiary of Energy Future Holdings (formerly TXU Corp.) during the summer of 2005. The IMM concluded that Luminant's behavior constituted an abuse of market power and increased balancing energy prices by an average of 15.5%. As a result, on March 28, 2007, the Commission's Executive Director filed a Notice of Violation (NOV) recommending the assessment of administrative penalties against the company.

The Commission contemplates that the successful proposer will assist commission staff by performing some or all of the following services: reviewing discovery material; evaluating testimony by Luminant; consulting with staff's experts; preparing responsive testimony; and appearing at a hearing to defend the testimony.

Proposers should have experience in analyzing market power issues in the context of competitive wholesale electric generation and sales, and in providing consulting expert services and/or expert witness services. The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for this award.

The PUCT shall make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services outlined in the RFP and on the reasonableness of the proposed fee.

All other factors being equal, preference will be given to a proposer whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

RFP documentation may be obtained by contacting Cindy Wilson, [cindy.wilson@puc.state.tx.us](mailto:cindy.wilson@puc.state.tx.us), Purchaser, at (512) 936-7069, Public Utility Commission of Texas, P.O. Box 13326, Austin, TX 78711-3326.

TRD-200800510  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2008



### 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 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 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 through the Internet. The address is: <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 subscription information, call the Texas Register at (800) 226-7199.

### 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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 *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).