

---

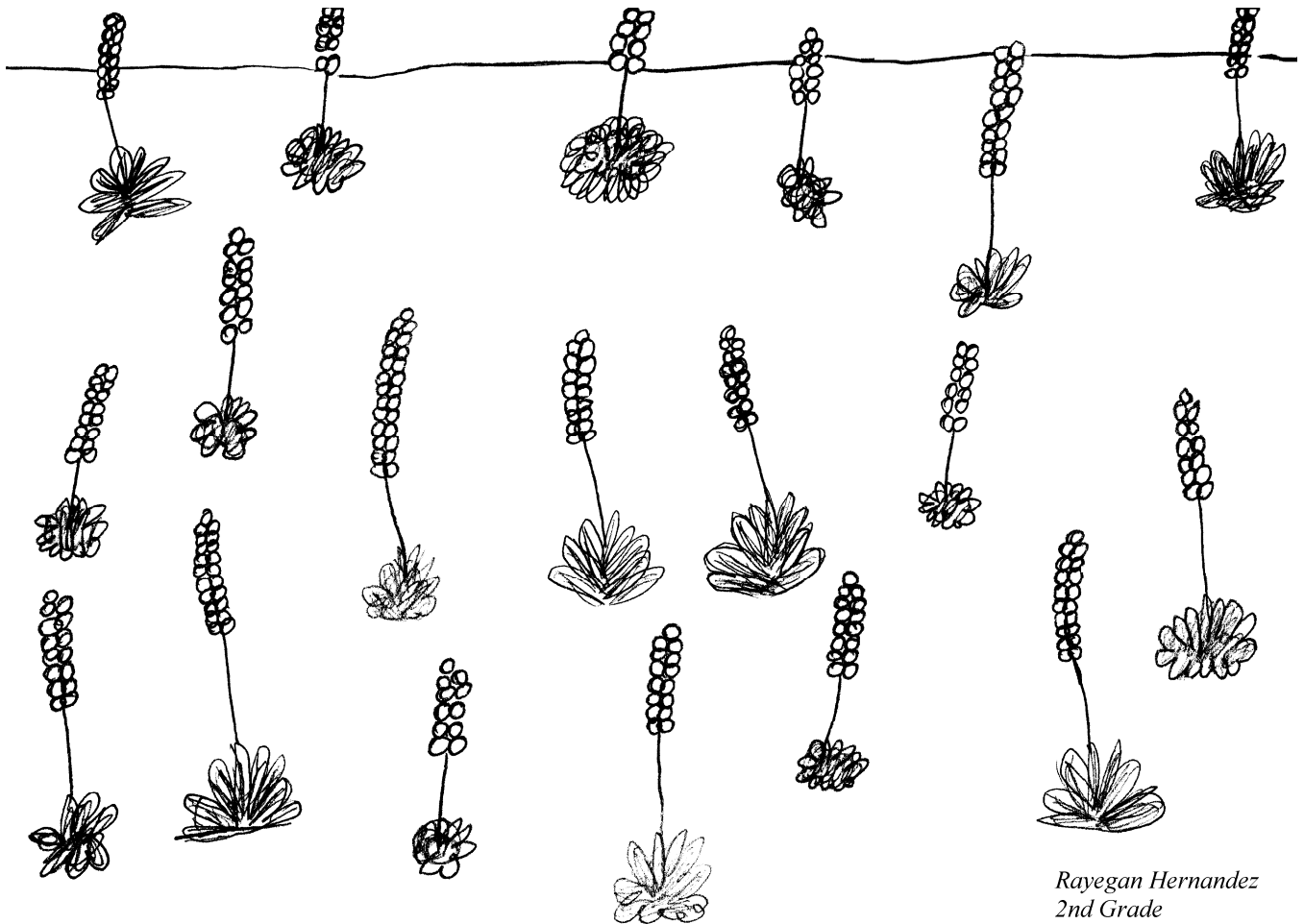
# TEXAS REGISTER

Volume 33 Number 19

May 9, 2008

Pages 3697 - 3844

---



Rayegan Hernandez  
2nd Grade

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

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

***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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

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

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

# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

**Secretary of State –**  
Phil Wilson

**Director –**  
Dan Procter

**Staff**  
Leti Benavides  
Dana Blanton  
Kris Hogan  
Belinda Kirk  
Roberta Knight  
Jill S. Ledbetter  
Juanita Ledesma  
Preeti Marasini

# IN THIS ISSUE

## **ATTORNEY GENERAL**

Request for Opinions .....	3703
Opinion .....	3703

## **PROPOSED RULES**

### **TEXAS HIGHER EDUCATION COORDINATING BOARD**

HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS	
19 TAC §6.73, §6.74 .....	3705

### **TEXAS MEDICAL BOARD**

GENERAL PROVISIONS	
22 TAC §161.6, §161.8 .....	3707

#### LICENSURE

22 TAC §§163.4 - 163.6, 163.10, 163.11 .....	3708
--	------

#### PHYSICIAN REGISTRATION

22 TAC §§166.1, 166.2, 166.5, 166.6 .....	3710
---	------

#### AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

22 TAC §169.2 .....	3711
---------------------	------

#### POSTGRADUATE TRAINING PERMITS

22 TAC §§171.3 - 171.6 .....	3712
22 TAC §171.5 .....	3714

#### TEMPORARY AND LIMITED LICENSES

22 TAC §172.1, §172.2 .....	3714
22 TAC §§172.3, 172.6, 172.8 .....	3715
22 TAC §172.13 .....	3716

#### USE OF EXPERTS

22 TAC §182.8 .....	3717
---------------------	------

#### SURGICAL ASSISTANTS

22 TAC §§184.1, 184.2, 184.4 - 184.6, 184.8, 184.9, 184.18 - 184.20, 184.26 .....	3717
---	------

#### STANDING DELEGATION ORDERS

22 TAC §§193.1, 193.2, 193.4, 193.6 - 193.10 .....	3721
22 TAC §193.11 .....	3723

### **TEXAS BOARD OF NURSING**

#### PRACTICE AND PROCEDURE

22 TAC §§213.27 - 213.30, 213.33 .....	3723
--	------

### **COMPTROLLER OF PUBLIC ACCOUNTS**

#### CENTRAL ADMINISTRATION

34 TAC §§1.330 - 1.332 .....	3725
------------------------------	------

### **TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

#### SUPERVISION

40 TAC §373.3 .....	3726
---------------------	------

#### FEES

40 TAC §375.1 .....	3726
---------------------	------

#### REGISTRATION OF FACILITIES

40 TAC §376.3 .....	3727
40 TAC §376.4 .....	3728

### **TEXAS DEPARTMENT OF TRANSPORTATION**

#### TRANSPORTATION PLANNING AND PROGRAMMING

43 TAC §§15.170 - 15.173 .....	3729
--------------------------------	------

### **WITHDRAWN RULES**

### **DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

#### OFFICE FOR DEAF AND HARD OF HEARING SERVICES

40 TAC §109.243 .....	3731
-----------------------	------

### **ADOPTED RULES**

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### AGRICULTURAL HAZARD COMMUNICATION REGULATIONS

4 TAC §8.2, §8.11 .....	3733
-------------------------	------

#### ROSE GRADING

4 TAC §23.4 .....	3733
-------------------	------

#### ECONOMIC DEVELOPMENT

4 TAC §§29.20 - 29.25 .....	3734
4 TAC §§29.30 - 29.32 .....	3734
4 TAC §§29.20 - 29.33 .....	3734

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.213 .....	3735
----------------------	------

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### ELECTRICIANS

16 TAC §73.80 .....	3740
---------------------	------

### **TEXAS MEDICAL BOARD**

#### SUPERVISION OF MEDICAL SCHOOL STUDENTS

22 TAC §162.1 .....	3740
---------------------	------

#### PHYSICIAN ADVERTISING

22 TAC §164.3 .....	3741
---------------------	------

PHYSICIAN PROFILES	
22 TAC §173.3, §173.7.....	3741
VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE	
22 TAC §196.1.....	3741
<b>STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY</b>	
SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS	
22 TAC §741.1.....	3743
22 TAC §741.44, §741.45.....	3743
22 TAC §§741.61, 741.62, 741.64.....	3743
22 TAC §§741.81 - 741.85.....	3749
22 TAC §741.91.....	3754
22 TAC §741.101.....	3755
22 TAC §741.112.....	3755
22 TAC §§741.161 - 741.164.....	3757
22 TAC §741.181.....	3758
22 TAC §741.201.....	3758
<b>TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS</b>	
LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS	
22 TAC §801.2.....	3763
22 TAC §801.17, §801.18.....	3764
22 TAC §§801.41 - 801.54.....	3764
22 TAC §801.72.....	3767
22 TAC §801.92.....	3768
22 TAC §§801.112 - 801.115.....	3768
22 TAC §801.142, §801.143.....	3768
22 TAC §801.174.....	3769
22 TAC §801.201.....	3770
22 TAC §§801.232, 801.235, 801.236.....	3770
22 TAC §§801.261 - 801.264, 801.266.....	3770
22 TAC §§801.291, 801.294, 801.296, 801.297, 801.301, 801.303.....	3771
22 TAC §801.332.....	3772
22 TAC §801.351.....	3773
<b>TEXAS DEPARTMENT OF INSURANCE</b>	
MISCELLANEOUS INSURERS	
28 TAC §13.313.....	3773
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	

CENTRAL ADMINISTRATION	
34 TAC §1.200.....	3774
TAX ADMINISTRATION	
34 TAC §3.438.....	3774
PREPAID HIGHER EDUCATION TUITION PROGRAM	
34 TAC §7.103.....	3775
<b>DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES</b>	
OFFICE FOR DEAF AND HARD OF HEARING SERVICES	
40 TAC §109.243.....	3775
<b>TEXAS DEPARTMENT OF TRANSPORTATION</b>	
TRAFFIC OPERATIONS	
43 TAC §§25.50, 25.51, 25.53.....	3776
OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS	
43 TAC §28.2.....	3780
43 TAC §§28.11 - 28.16.....	3783
43 TAC §28.30.....	3783
43 TAC §28.64.....	3783
43 TAC §28.91, §28.92.....	3783
43 TAC §28.101, §28.102.....	3784
43 TAC §§28.110 - 28.116.....	3784
43 TAC §§28.200 - 28.202.....	3784
43 TAC §§28.300 - 28.306.....	3785
<b>RULE REVIEW</b>	
<b>Proposed Rule Reviews</b>	
Texas Medical Board.....	3787
Texas Department of Public Safety.....	3788
<b>Adopted Rule Reviews</b>	
Texas Department of Agriculture.....	3788
Texas Board of Occupational Therapy Examiners.....	3789
Office of the Secretary of State.....	3789
<b>IN ADDITION</b>	
<b>Ark-Tex Council of Governments</b>	
Request for Proposal for Provision of a Regional Law Enforcement Training Program.....	3791
<b>Office of the Attorney General</b>	
Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action.....	3791

<b>Chambers County</b>		
Request for Comments and Proposals .....	3791	
<b>Coastal Coordination Council</b>		
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	3792	
<b>Office of Consumer Credit Commissioner</b>		
Notice of Rate Ceilings .....	3792	
<b>Texas Department of Criminal Justice</b>		
Notice of Contract Award .....	3792	
<b>Texas Commission on Environmental Quality</b>		
Agreed Orders .....	3793	
Enforcement Orders .....	3797	
Notice of Availability of the Draft April 2008 Update to the Water Quality Management Plan for the State of Texas .....	3801	
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions .....	3802	
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions .....	3803	
Notice of Water Quality Applications .....	3805	
Proposal for Decision .....	3807	
Revised Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment .....	3807	
<b>Texas Facilities Commission</b>		
Request for Proposals #303-8-10491-A .....	3808	
<b>Texas Health and Human Services Commission</b>		
Correction to Notice of Public Hearing on Proposed Medicaid Payment Rates .....	3808	
Correction to Notice of Public Hearing on Proposed Medicaid Payment Rates .....	3809	
<b>Department of State Health Services</b>		
Notice of Public Meeting .....	3809	
<b>Texas Department of Housing and Community Affairs</b>		
		Request for Proposal for State of Texas Balance of State Continuum of Care .....
		3810
		<b>Texas Department of Insurance</b>
		Company Licensing .....
		3811
		<b>Texas Lottery Commission</b>
		Instant Game Number 1041 "Magnificent Millions" .....
		3811
		Instant Game Number 1049 "Aztec Gold" .....
		3815
		Instant Game Number 1075 "Instant Cash Five" .....
		3821
		<b>North Central Texas Council of Governments</b>
		Notice of Consultant Contract Award .....
		3825
		<b>University of North Texas System</b>
		Notice of Request for Information for Outside Legal Services Related to Intellectual Property Matters .....
		3825
		<b>Texas Board of Nursing</b>
		Pilot Disciplinary Matrix .....
		3826
		<b>Panhandle Regional Planning Commission</b>
		Request for Proposals .....
		3840
		<b>Public Utility Commission of Texas</b>
		Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority .....
		3840
		Notice of Application for Waiver of Denial of Request for NXX Code .....
		3840
		Request for Proposals: Consulting Expert Services Concerning the Compliance of Certain Generating Units with Rules on Governor Response and the Provision of Frequency Bias .....
		3840
		<b>Texas Department of Transportation</b>
		Aviation Division - Request for Proposal for Aviation Engineering Services .....
		3841
		Notice of Intent - South Padre Island Second Access from SH 100 to PR 100, Cameron County, Texas .....
		3842
		<b>The University of Texas System</b>
		Notice of Intent to Amend Existing Consulting Contract .....
		3843

# Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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

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

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

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

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

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

...

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

# THE 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-0701-GA

#### Requestor:

The Honorable David H. Aken  
San Patricio County Attorney  
San Patricio County Courthouse, Room 108  
Sinton, Texas 78387

Re: Whether, under section 81.002(a), Local Government Code, the county commissioner's oath provision, a county may employ a sub-contracting company that is owned by a commissioner (RQ-0701-GA)

#### Briefs requested by May 26, 2008

### RQ-0702-GA

#### Requestor:

The Honorable Wayne Smith  
Chair, Committee on County Affairs  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Re: Authority of the Cedar Bayou Navigation District to enact regulations regulating structures within the district's boundaries under particular circumstances (RQ-0702-GA)

#### Briefs requested by May 29, 2008

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

TRD-200802270  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 30, 2008

## Opinion

### Opinion No. GA-0619

The Honorable James M. Kuboviak  
Brazos County Attorney  
Brazos County Courthouse  
300 East 26th Street, Suite 325  
Bryan, Texas 77803-5327

Re: Whether Government Code section 614.122 requires a county attorney to issue identification cards to unpaid investigators of his office (RQ-0641-GA)

## S U M M A R Y

Government Code section 614.122 requires a law enforcement agency or other governmental entity that appoints or employs a peace officer to issue an identification card to its full-time and part-time peace officers. Investigators appointed by the county attorney are peace officers. Full-time and part-time peace officers are defined as compensated peace officers for purposes of this provision. Section 614.122 does not require the Brazos County Attorney to issue identification cards to uncompensated investigators that he has appointed.

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

TRD-200802271  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 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 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

##### SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

###### 19 TAC §6.73, §6.74

The Texas Higher Education Coordinating Board proposes amendments to §6.73, and §6.74, concerning the administration of the Nursing, Allied Health and Other Health-related Education Grant Program and the Minority Health Research and Education Grant Program. Specifically, changes will substitute the "Board" for "Commissioner" as the responsible body for making funding decisions. Other changes extend the range of minimum and maximum awards and the award length for both grant programs. Other changes eliminate the word "peer" from "peer reviewer" and expand the definition of appropriate reviewers to evaluate applications for both grant programs. Other changes allow the Board to adjust award criteria and weights to individual grant competitions and eliminate similar language that only applied to competitive grants in nursing education. Other changes allow oral presentations by highly-ranked applications to be considered in award decisions under the Minority Health Research and Education Grant Program as they are for the Nursing, Allied Health and Other Health-related Education Grant Program. Finally, changes extend the effective dates of §6.73(h) consistent with Texas Education Code, §63.202(f) and (g).

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of this rule change.

Dr. Stafford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring effective grant programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or joe.stafford@theccb.state.tx.us.

Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §63.202(c) and §63.302(d) which provide the Coordinating Board with the authority to establish rules for the grant programs.

The amendment affects the Texas Education Code, §§63.201 - 63.203 and §§63.301 - 62.302.

*§6.73. Nursing, Allied Health and Other Health-Related Education Grant Program.*

(a) General Information. The program, as it applies to this section:

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

(7) General Selection Criteria--Competitive. The Program is designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) Program quality as determined by ~~peer~~ reviewers;

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

(8) Minimum award--~~\$15,000~~ ~~[\$75,000]~~ per award in any fiscal year.

(9) Maximum award--~~30~~ ~~[45]~~ percent of the estimated available funding per award in any fiscal year.

(10) Maximum award length--A program is eligible to receive funding for up to three ~~[two]~~ years within a grant period ~~[fiscal biennium]~~. Previously funded programs may reapply to receive funding for one additional grant period ~~[funding biennium]~~.

(b) Review Criteria ~~[Peer Review]~~.

(1) The Board shall use peer and Board staff reviewers to evaluate the quality of applications.

(2) The Commissioner shall select qualified individuals to serve as reviewers. Reviewers ~~[Peer reviewers]~~ shall demonstrate appropriate credentials to evaluate grant applications in health education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) The Board staff shall provide written instructions and training for ~~peer~~ reviewers.

(4) The ~~peer~~ reviewers shall score each application according to these award criteria and weights:

(A) - (F) (No change.)

(5) Award criteria and weights may be adjusted to best fulfill the purpose of an individual grant competition, if those adjusted award criteria and weights are first included in the Request for Proposal for the grant competition.

(c) Application and Review Process.



(1) The Commissioner may solicit recommendations from an advisory committee or other group of qualified individuals on funding priorities for each ~~biennial~~ grant period, and the administration of the application and review process.

(2) The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the Request for Proposal. An application must meet the requirements of the Request for Proposal and be submitted with proper authorization before or on the day specified by the Board to qualify for further consideration. Qualified applications shall be forwarded to the ~~peer~~ reviewers for evaluation. Board staff shall notify applicants eliminated through the screening process within 30 days of the submission deadline.

(3) ~~Reviewers~~ ~~Peer reviewers~~ shall evaluate applications and assign scores based on award criteria. All evaluations and scores of the review committee are final.

(4) Board staff shall rank each application based on points assigned by ~~peer~~ reviewers, and then may request that individuals representing the most highly-ranked applications make oral presentations on their applications to the ~~peer~~ reviewers and other Board staff. The Board staff may consider reviewer comments from the oral presentations in recommending a priority ranked list of applications to the Board ~~Commissioner~~ for approval.

(d) Funding Decisions.

(1) (No change.)

(2) The Board shall ~~delegates to the Commissioner, the authority to~~ approve grants upon the recommendation of the panel of ~~peer~~ reviewers and Board staff. The Commissioner shall report approved grants to the Board for each biennial grant period.

(3) Funding recommendations to the Board ~~Commissioner~~ shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fund a proposal after the higher-ranking and recommended applications have been funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the ranked list. The process shall be continued until all grant funds are awarded to the most highly ranked and recommended applications.

(e) Contract. Following approval of grant awards by the Board ~~Commissioner~~, the successful applicants must sign a contract issued by Board staff and based on the information contained in the application.

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

(h) This subsection pertains to the 2008-09 ~~[2004-05]~~ and 2010-11 ~~[2006-07]~~ biennia only (rules are effective only from September 1, 2007 ~~[2003]~~ to August 31, 2011 ~~[2007]~~).

(1) Funds available to the program for the 2008-09 ~~[2004-05]~~ and 2010-11 ~~[2006-07]~~ biennia will be distributed as grants in proportions determined by the Board ~~Commissioner~~ through one or more programs that are based on:

(A) a competitive, peer- or staff-reviewed process for eligible institutions proposing to address the shortage of registered nurses and nursing faculty, as described in subsections (a) - (g) of this section unless amended in subsections (h)(2) and (h)(3) of this section;

(B) - (C) (No change.)

(2) (No change.)

(3) In subsections (a)(5), (a)(8), (a)(9), (a)(10) and (b)(4), of this section, the following pertain to subsection (h)(1)(A) of this section:

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

~~{(E) Peer review award criteria and weights may be adjusted to best fulfill the purpose of the grant program.}~~

§6.74. *Minority Health Research and Education Grant Program.*

(a) General Information. The program, as it applies to this section:

(1) - (7) (No change.)

(8) General Selection Criteria--Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) Program quality as determined by ~~peer~~ reviewers;

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

(9) Minimum award--\$15,000 ~~[\$50,000]~~ per award in any fiscal year.

(10) Maximum award--30 ~~[45]~~ percent of the estimated available funding per award in any fiscal year.

(11) Maximum award length--A program is eligible to receive funding for up to three ~~[two]~~ years within a grant period ~~[fiscal biennium]~~. Previously funded programs may reapply to receive funding for one additional grant period ~~[funding biennium]~~.

(b) Review Criteria ~~[Peer Review]~~.

(1) The Board shall use peer and Board staff reviewers to evaluate the quality of applications.

(2) The Commissioner shall select qualified individuals to serve as reviewers. Reviewers ~~Peer reviewers~~ shall demonstrate appropriate credentials to evaluate grant applications in health research and education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) The Board staff shall provide written instructions and training for ~~peer~~ reviewers.

(4) The ~~peer~~ reviewers shall score each application according to these award criteria and weights:

(A) - (F) (No change.)

(5) Award criteria and weights may be adjusted to best fulfill the purpose of an individual grant competition, if those adjusted award criteria and weights are first included in the Request for Proposal for the grant competition.

(c) Application and Review Process.

(1) The Commissioner may solicit recommendations from an advisory committee or other group of qualified individuals on funding priorities for each ~~biennial~~ grant period, and the administration of the application and review process.

(2) The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the Request for Proposal. An application must meet the requirements of the Request for Proposal and be submitted with proper authorization before or on the day specified by the Board to qualify for further consideration. Qualified applications shall be forwarded to the ~~peer~~ reviewers for evaluation. Board staff shall notify applicants eliminated through the screening process within 30 days of the submission deadline.

(3) Reviewers ~~[Peer reviewers]~~ shall evaluate applications and assign scores based on award criteria. All evaluations and scores of the review committee are final.

(4) Board staff shall rank each application based on points assigned by ~~[peer]~~ reviewers, and then may request that individuals representing the most highly-ranked applications make oral presentations on their applications to the reviewers and other Board staff. The Board staff may consider reviewer comments from the oral presentations in recommending ~~[recommend]~~ a priority ranked list of applications to the Board ~~[Commissioner]~~ for approval.

(d) Funding Decisions.

(1) (No change.)

(2) The Board shall ~~[delegates to the Commissioner, the authority to]~~ approve grants upon the recommendation of the panel of ~~[peer]~~ reviewers and Board staff. The Commissioner shall report approved grants to the Board for each biennial grant period.

(3) Funding recommendations to the Board ~~[Commissioner]~~ shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fund a proposal after the higher-ranking and recommended applications have been funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the ranked list. The process shall be continued until all grant funds are awarded to the most highly ranked and recommended applications.

(e) Contract. Following approval of grant awards by the Board ~~[Commissioner]~~ the successful applicants shall sign a contract issued by Board staff and based on the information contained in the application.

(f) - (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 April 25, 2008.

TRD-200802184

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 24, 2008

For further information, please call: (512) 427-6114



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 161. GENERAL PROVISIONS

##### 22 TAC §161.6, §161.8

The Texas Medical Board proposes amendments to §161.6, Committees of the Board, and §161.8, Deputy Executive Director.

The amendment to §161.6 updates the duties of the Licensure Committee. The amendment to §161.8 updates name of Deputy Executive Director to Chief of Staff.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 161.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to conform the rule to current practice for clarification.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§161.6. *Committees of the Board.*

(a) (No change.)

(b) The following are standing and permanent committees of the board. The responsibilities and authority of these committees shall include the following duties and powers, and other responsibilities and charges that the board may from time to time delegate to these committees.

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

(5) Licensure Committee:

(A) - (I) (No change.)

(J) review applications for acupuncture licensure recommended by the Texas State Board of Acupuncture Examiners and for applicants that hold licenses in other states that have licensure requirements that are substantially equivalent to those of this state, make determinations of eligibility, and report to the board its recommendations;

~~[(K) review applications for approval and certification of non-profit health organizations pursuant to the Medical Practice Act;]~~

~~[(L) review applications and reports for continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;]~~

(K) ~~[(M)]~~ review applications and make initial determinations and recommendations to the board regarding approval, denial, revocation, decertification, or continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(L) ~~[(N)]~~ develop and review board rules regarding all persons and entities subject to the Board's jurisdiction ~~[non-profit health organizations]~~, and make recommendations to the board regarding changes or implementation of such rules; ~~[and]~~

(M) review applications for surgical assistant licensure, make determinations, of eligibility, and report to the board its recommendations; and

(N) [~~(O)~~] make recommendations to the board regarding matters brought to the attention of the licensure committee.

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

(c) (No change.)

§161.8. Chief of Staff [Deputy Executive Director].

(a) The executive director may determine qualifications for and employ a chief of staff [deputy executive director] who shall be responsible for the administrative operations of the agency and the performance of other duties as assigned by the executive director.

(b) Unless the board assigns duties or prerogatives exclusively to the executive director, the chief of staff [deputy executive director] may exercise any responsibilities or authority of the executive director except for medical director duties.

(c) The chief of staff [deputy executive director] acts under the supervision and at the direction of the executive director.

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 April 22, 2008.

TRD-200802092

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## CHAPTER 163. LICENSURE

### 22 TAC §§163.4 - 163.6, 163.10, 163.11

The Texas Medical Board proposes amendments to §163.4, Procedural Rules for Licensure Applicants, §163.5, Licensure Documentation, §163.6, Examinations Accepted for Licensure, §163.10, Relicensure, and §163.11, Active Practice of Medicine.

The amendment to §163.4 limits the Executive Director to determining applicants ineligible to be based on specific statutory or rule provisions. The amendment to §163.5 clarifies when an applicant must submit documentation regarding inpatient treatment, and updates language regarding alcohol/substance disorder and physical illness that did or could have impaired an applicant's ability to practice medicine. The amendment to §163.6 updates three-Attempt limit to conform to statutory requirements adopted by the Legislature in 2007. The amendment to §163.10 updates requirements to conform to previous rule changes to require that jurisprudence Examination be taken only once. The amendment to §163.11 deletes "passage of SPEX examination" as a stated remedy for applicants who cannot demonstrate that they have been in the active practice of medicine.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 163.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local govern-

ment as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed will be none.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to conform this rule to rules previously adopted and provide efficiency at the agency and convenience for applicants by requiring that the Jurisprudence Examination be taken only once; avoid confusion by applicants who have not understood that the passage of the SPEX examination must be approved by the agency as a remedy and clarify the rule to conform with the actual practice; provide clarification and conform the rule to actual practice; and conform the rule to statutory changes adopted by the Legislature and clarify the three-attempt rule in accordance with current practice.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§163.4. Procedural Rules for Licensure Applicants.

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

(e) If the Executive Director determines that the applicant does not clearly meet all licensing requirements, a license may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(f) If the Executive Director determines that the applicant is ineligible for licensure based on one or more of the statutory or regulatory provisions listed in paragraphs (1) - (5) of this subsection [for one or more reasons], the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued. Grounds for ineligibility under this subsection include noncompliance with the following:

(1) Section 155.003(a)(1) of the Act that requires the applicant to be 21 years of age;

(2) Section 155.003(b) and (c) of the Act that require that medical or osteopathic medical education received by an applicant must be accredited by an accrediting body officially recognized by the United States Department of Education, or meet certain other requirements, as more fully set forth in §§163.4(a)(8), 163.5(b)(11), 163.5(c)(2)(C), 163.5(c)(2)(D), and 163.1(12)(B)(iii) and (iv) of this chapter;

(3) Sections 155.051 - 155.0511, and 155.056 of the Act that relates to required licensure examinations and examination attempts;

(4) Section 163.7 of this chapter relating to the Ten Year Rule; and

(5) Section 163.6(e) of this chapter that requires passage of the Jurisprudence Examination within three attempts,

*§163.5. Licensure Documentation.*

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

(d) Applicants may be required to submit other documentation, which may include the following:

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

(4) Inpatient Treatment for Alcohol/Substance Disorder [~~Abuse~~] or Physical or Mental Illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder [~~abuse~~] or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include items listed in subparagraphs (A) - (D) of this paragraph. An inpatient facility shall include a hospital, ambulatory surgical center, nursing home, and rehabilitation facility. [~~but not limited to:~~]

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) Outpatient Treatment for Alcohol/Substance Disorder [~~Abuse~~] or Mental Illness. Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance disorder [~~abuse~~] or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) - (9) (No change.)

(e) (No change.)

*§163.6. Examinations Accepted for Licensure.*

(a) (No change.)

(b) Examination Attempt Limit [~~Three-Attempt Limit~~].

(1) An applicant must pass each part of an examination listed in subsection (a) of this section within three attempts. An applicant who attempts more than one type of examination must pass each part of at least one examination and shall not be allowed to combine parts of different types of examination. Attempts at a comparable part

of a different type of examination shall be counted against the three-attempt limit.

(2) Notwithstanding paragraph (1) of this subsection, an applicant who, on September 1, 2005, held a Texas physician-in-training permit issued under §155.105 of the Act or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:

(A) passed all but one part of the examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;

(B) is specialty board certified by a specialty board that:  
(i) is a member of the American Board of Medical Specialties; or

(ii) is approved by the American Osteopathic Association; and

(iii) has completed in this state an additional two years of postgraduate medical training approved by the board.

(3) The limitation on examination attempts by an applicant under paragraph (1) of this subsection does not apply to an applicant who:

(A) is licensed and in good standing as a physician in another state;

(B) has been licensed for at least five years;

(C) does not hold a medical license in the other state that has any restrictions, disciplinary orders, or probation; and

(D) passed all but one part of the examination approved by the board within three attempts and:

(i) passed the remaining part of the examination within one additional attempt; or

(ii) passed the remaining part of the examination within six attempts if the applicant:

(I) is specialty board certified by a specialty board that:

(-a-) is a member of the American Board of Medical Specialties; or

(-b-) is approved by the American Osteopathic Association; and

(II) has completed in this state an additional two years of postgraduate medical training approved by the board.

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

*§163.10. Relicensure.*

(a) Application for Relicensure. If a physician's license has been automatically cancelled due to failure to submit a complete registration application and registration fee, the physician must apply for relicensure and may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

~~[(b) Exemption from Jurisprudence Examination. A person may qualify for a new license without having to take the Texas jurisprudence examination if that person's license has been canceled for less than two years.]~~

(b) [(e)] Existing Board Orders at Time of Cancellation.

(1) A physician who allows his or her license to be canceled following nonpayment while under an order of the board may apply for relicensure. Unless otherwise provided, the terms of the order shall be tolled for the period following cancellation.

(2) The licensee shall be required to comply with the terms of the order for either the period of time remaining on the order when the licensee had his or her license canceled for nonpayment of licensure fees or for an extended period of time as established by the board at the time of relicensure.

(3) A physician who allows his or her license to be canceled following nonpayment while under a suspension order of the board must also demonstrate that his or her return to the practice of medicine is in the physician's and the public's best interest as defined under Chapter 167 of this title (relating to Reinstatement and Reissuance).

(4) The board retains the discretion to add or delete terms and conditions of the tolled order upon the granting of relicensure.

§163.11. Active Practice of Medicine.

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

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

(1) current certification or recertification by the American Board of Medical Specialties or Bureau of Osteopathic Specialists obtained by passing a monitored specialty certification or recertification examination or formal evaluation;

[(2) passage of the SPEX examination;]

(2) [(3)] limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine;

(3) [(4)] remedial education, including but not limited to a mini-residency, fellowship or other structured program;

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

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 April 22, 2008.

TRD-200802093

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.1, 166.2, 166.5, 166.6

The Texas Medical Board proposes amendments to §166.1, Physician Registration, §166.2, Continuing Medical Education,

§166.5, Relicensure, and §166.6, Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.

The amendment to §166.1 updates rule to conform with biennial registration. The amendment to §166.2 updates rule to conform with biennial registration and updates reference to Disciplinary Guidelines, Chapter 190. The amendment to §166.5 clarifies that relicensure is required in the case of either Relinquishment or Voluntary Surrender of a License. The amendment to §166.6 updates rule to conform with biennial registration.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 166.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide clarity by: conforming the rule to the change to biennial registration; updating references to other rules; and specifying that a relicensure application is required after both a relinquishment or voluntary surrender of a license.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§166.1. Physician Registration.

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

(e) All permits issued to license holders are valid [that expire on or after January 1, 2006 shall remain in effect] for two-year periods.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 [24] hours of continuing medical education (CME) every 24 [12] months. CME hours must be completed in the following categories:

(1) At least 24 [12] hours every 24 [12] months are to be from formal courses that are:

(A) - (E) (No change.)

(2) At least two [one] of the 24 [12] formal hours of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 24 [12] hours for the 24 [12]-month period may be composed of informal self-study, attendance at hospital

lectures or grand rounds not approved for formal CME, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(4) (No change.)

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years [~~year~~].

(1) A licensee may carry forward CME credit hours earned prior to a registration report which are in excess of the 48 [~~24~~]-hour biennial [~~annual~~] requirement and such excess hours may be applied to the following years' requirements.

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

~~[(4) A licensee under a two-year permit who timely registers may apply CME credit hours retroactively to the preceding year's annual requirement, however, those hours may be counted only toward one registration period. A maximum of 24 hours may be applied retroactively.]~~

(c) - (j) (No change.)

(k) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the completion of the required number of hours of CME on his or her registration application as provided for in this section may [~~shall~~] result in the denial of the registration permit until such time as the physician obtains and reports the required CME hours. The executive director of the board may issue to the licensee a temporary CME license numbered so as to correspond to the nonrenewed license. Such a temporary CME license shall be issued upon receipt of a written request and fee for the license made prior to the expiration of the 30-day grace period for registration at the direction of the executive director for a period of no longer than 60 days. A temporary CME license issued pursuant to this subsection may be issued to allow the physician who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(l) (No change.)

(m) CME hours which are obtained during the 30 day grace period after the expiration of the licensee's permit or while under a CME temporary license to comply with the CME requirements for the preceding two years [~~year~~] as a prerequisite for obtaining a registration permit, shall first be credited to meet the CME requirements for the previous registration period and then [~~year. Once the previous year's CME requirement is satisfied,~~] any additional hours obtained shall be credited to meet the CME requirements for the current registration period [~~year~~].

(n) (No change.)

(o) Administrative penalties for failure to timely obtain and report required CME hours may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 (relating to Disciplinary Sanction Guidelines) [~~determined by the Disciplinary Process Review Committee of the board as provided for in §187.40 of this title (relating to Administrative Penalties)~~].

(p) Unless exempted under the terms of this section, failure to obtain and timely report the CME hours on a registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Penalties). Any temporary CME licensure fee and any administrative penalty imposed for failure to obtain and timely report the 48 [~~24~~] hours of CME required for a [~~annual~~] registration permit application shall be in addi-

tion to the applicable penalties for late registration as set forth in §175.2 of this title (relating to Penalties).

§166.5. *Relicensure.*

(a) (No change.)

(b) To be relicensed following voluntary relinquishment or surrender of a medical license, a physician must reapply and qualify under §164.151 of the Act and §196.4 of this title (relating to Relicensure After Relinquishment or [~~and~~] Surrender of a Medical License).

§166.6. *Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.*

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

(d) A physician who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing medical education as required under the Act, §§156.051 - 156.055 [~~055~~] and §166.2 of this title (relating to Continuing Medical Education), except that the number of hours of informal CME, as required by §166.2(a)(3) shall be reduced from 24 [~~12~~] hours to 20 [~~10~~] hours.

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

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

Filed with the Office of the Secretary of State on April 22, 2008.

TRD-200802094

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## CHAPTER 169. AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

### 22 TAC §169.2

The Texas Medical Board proposes amendments to §169.2, Definitions.

The amendment to §169.2 updates name of Texas Medical Board.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 169.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the rules by updating the name of the agency.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§169.2. *Definitions.*

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

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

(3) Board--The Texas Medical Board [~~State Board of Medical Examiners~~].

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

(7) Physician--A licensee of the Texas Medical Board [~~State Board of Medical Examiners~~].

(8) - (13) (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 April 22, 2008.

TRD-200802095

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## CHAPTER 171. POSTGRADUATE TRAINING PERMITS

The Texas Medical Board proposes amendments to §171.3, Physician-in-Training Permits, §171.4, Board-Approved Fellowships, §171.6, Duties of Program Directors to Report and the repeal of §171.5, Institutional Permits and new §171.5, Duties of PIT Holders to Report.

The amendment to §171.3 updates name of Texas Medical Board; extends period for updating a Physician-In-Training Permit application from 90 to 120 days; conforms Executive Director authority to grant application, refer to committee, or determine ineligible to that of licensure application; clarifies provision regarding alcohol/substance disorder and physical illness and outpatient treatment. The amendment to §171.4 deletes obsolete provision regarding fellowships approved before September 1, 2006. The repeal of §171.5 removes obsolete provision regarding Institutional Permits, which have been replaced by Physician-In-Training Permits, and replaces with a new rule regarding the "Duties of PIT Holders to Report." The amendment to §171.6 extends from 7 days to 30 days for Program Directors to report certain matters to the Board; requires reporting for all participants in the program, whether under a PIT Permit or full License; and deletes requirement for annual reports by Program Directors

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 171.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the rule by updating the name of the agency and provide additional protection of the public by requiring that applications be updated after 120 days, conform the practice regarding the Executive Director approving a physician-in-training permit, referring to committee, or determining ineligible; remove an obsolete provision from the rule to avoid confusion regarding fellowships approved before September 1, 2006; remove from the rule an obsolete provision relating to Institutional Permits, since such permits are no longer issued; and provide more flexibility for Program Directors to report certain matters to the Board and assures that such reports are provided to any person in the training program, whether such person is practicing in the training program under a physician-in-training permit or a full license.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

### 22 TAC §§171.3 - 171.6

The amendments and new rule are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §171.3. *Physician-in-Training Permits.*

(a) Definitions.

(1) (No change.)

(2) Board-approved Fellowship: a clearly defined and delineated postgraduate subspecialty-training program approved by the Texas Medical Board [~~State Board of Medical Examiners~~] under §171.4 of this title.

(3) - (6) (No change.)

(b) (No change.)

(c) Application for Physician-in-Training Permit.

(1) Application Procedures.

(A) Applications for a physician-in-training permit shall be submitted to the board no earlier than the 120th [~~ninetyth (90th)~~] day prior to the date the applicant intends to begin postgraduate training in Texas to ensure the application information is not outdated. To assist in the expedited processing of the application, the application should be submitted as early as possible within the sixty-day window prior to the date the applicant intends to begin postgraduate training in Texas.

(B) - (G) (No change.)

(H) All applicants for physician-in-training permits whose applications have been filed with the board in excess of one year will be considered expired.

(I) If the Executive Director determines that the applicant clearly meets all PIT requirements, the Executive Director or a person designated by the Executive Director, may issue a permit to the applicant, to be effective on the date of the reported first date of the training program without formal board approval, as authorized by §155.002(b) of the Act.

(J) If the Executive Director determines that the applicant does not clearly meet all PIT requirements, a PIT may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(K) If the Executive Director determines that the applicant is ineligible for a PIT for one or more reasons listed under subsection (b)(1)(A) and (C) - (E) of this section, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(2) Physician-in-Training Permit Application. An application for a physician-in-training permit must be on forms furnished by the board and include the following:

(A) - (C) (No change.)

(D) medical records for inpatient treatment for alcohol/substance disorder [abuse], mental illness, and physical illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder [abuse], mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) - (iv) (No change.)

(E) medical records for outpatient treatment for alcohol/substance disorder [abuse], mental illness, or physical illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) - (iii) (No change.)

(F) - (G) (No change.)

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

#### §171.4. Board-Approved Fellowships.

(a) - (g) (No change.)

[(h) All fellowships that have been approved before September 1, 2006 shall expire on the date provided in the original approval, but no later than August 31, 2007. A new application for approval must be submitted at least three months prior to the expiration date or on June 1, 2007, whichever date is earlier. All requests for board approval of

fellowships submitted on or after September 1, 2006 must comply with the requirements of this chapter.]

#### §171.5. Duties of PIT Holders to Report.

(a) Failure of any PIT holder to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the PIT holder.

(b) The PIT holder shall report in writing to the executive director of the board the following circumstances within thirty days of their occurrence:

(1) the opening of an investigation or disciplinary action taken against the PIT holder by any licensing entity other than the TMB;

(2) an arrest, fine (over \$100), charge or conviction of a crime, indictment, imprisonment, placement on probation, or receipt of deferred adjudication; and

(3) diagnosis or treatment of a physical, mental or emotional condition, which has impaired or could impair the PIT holder's ability to practice medicine.

#### §171.6. Duties of Program Directors to Report.

(a) (No change.)

(b) The director of each approved postgraduate training program shall report in writing to the executive director of the board the following circumstances within thirty (30) [seven] days of the director's knowledge for all participants [any physician-in-training permit holder] completing postgraduate training:

(1) - (7) (No change.)

[(e) Annual reports. Program directors for postgraduate training programs must ensure that the board receives certain information annually in order to keep the board informed on a permit holder's progress while in the approved training program. The required information shall be sent to the board on forms provided by the board and shall include:]

[(1) information regarding the permit holder's criminal and disciplinary history; professional character; mailing address; and place where engaged in training since the program director's last report;]

[(2) certification by the permit holder's program director, on a form provided by the board, regarding the permit holder's training; and]

[(3) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.]

(c) [(d)] A violation of §§164.051-164.053 or any other provision of the Medical Practice Act is grounds for disciplinary action by the Board.

This agency hereby certifies that the 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 April 22, 2008.

TRD-200802096

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



◆ ◆ ◆

## 22 TAC §171.5

*(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 Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

### §171.5. Institutional Permits.

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 April 22, 2008.

TRD-200802097

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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

◆ ◆ ◆

## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board proposes amendments to §172.1, Purpose; §172.2, Construction and Definitions; §172.3, Distinguished Professors Temporary License; §172.6, Visiting Professor Temporary License; §172.8, Faculty Temporary License; and §172.13, Conceded Eminence

The amendment to §172.1 adds citation to Medical Practice Act to clarify authority for chapter. The amendment to §172.2 conforms to other rules regarding authority of Executive Director to issue a temporary license, refer to committee, or determine ineligible. The amendment to §172.3 refers to medical schools that are accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education, instead of listing each school. The amendment to §172.6 refers to medical schools that are accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education, instead of listing each school. The amendment to §172.8 refers to medical schools that are accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education, instead of listing each school. The amendment to §172.13 clarifies that medical school must be accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 172.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in

effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide clarity by referencing a citation to the Medical Practice Act; provide efficiency by authorizing the Executive Directors to issue a temporary license, refer to committee, or determine ineligible, just as is provided for applications for full licensure; eliminate listing medical schools to avoid necessity of amending the rule anytime a medical school is established; and provide clarity to the rules by stating that a medical school must be accredited by certain accrediting institutions.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §172.1, §172.2

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §172.1. Purpose.

Pursuant to §155.104 of the Medical Practice Act, the Board is authorized to adopt rules relating to granting temporary and limited licenses. This chapter is promulgated to provide criteria for the eligibility and discipline of physicians who apply for and are granted temporary and limited licenses.

#### §172.2. Construction and Definitions.

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

(f) All applicants for temporary or limited licenses whose applications have been filed with the board in excess of one year will be considered expired.

(1) If the Executive Director determines that the applicant clearly meets all requirements for the temporary or limited license, the Executive Director or a person designated by the Executive Director, may issue a license to the applicant, to be effective on the date of issuance without formal board approval, as authorized by §155.002(b) of the Act.

(2) If the Executive Director determines that the applicant does not clearly meet all requirements for a temporary or limited license, a license may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(3) If the Executive Director determines that the applicant is ineligible for a temporary or limited for one or more reasons that are not subject to exception by statute or rule, the applicant may appeal that decision to the Licensure Committee before completing other licensure

requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(g) [(f)] In addition to other definitions that may apply to licensure, the following words and terms, when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Act that is part of patient care service--Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.

(2) Episodic consultation--Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year. Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.

(3) Informal consultation--Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.

(4) Patient care service initiated in this state--Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.

(5) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(6) Practice of medicine--A person shall be considered to be practicing medicine under any of the following circumstances listed in subparagraphs (A) - (D) of this paragraph. This definition does not negate the responsibility of applicants to demonstrate engagement in the active practice of medicine as set forth in § [Section] 163.11 of this title (relating to Active Practice of Medicine).

(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof;

(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation;

(C) the person exercises medical judgment, renders an opinion, or gives advice concerning the diagnosis or treatment of a patient, or makes any determination regarding the appropriate or necessary medical response to a particular patient's medical condition that affects the medical care of the patient; or

(D) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.

(7) State--Any state, territory, or insular possession of the United States and the District of Columbia.

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 April 22, 2008.

TRD-200802098

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §§172.3, 172.6, 172.8

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §172.3. *Distinguished Professors Temporary License.*

(a) The executive director of the board may issue a distinguished professors temporary license to an applicant:

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

(3) who holds an appointment as a salaried full professor on the faculty working full-time in one of the following institutions:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline.

[(A) University of Texas Medical Branch at Galveston;]

[(B) University of Texas Southwestern Medical Center at Dallas;]

[(C) University of Texas Health Science Center at Houston;]

[(D) University of Texas Health Science Center at San Antonio;]

[(E) University of Texas Health Center at Tyler;]

[(F) University of Texas M.D. Anderson Cancer Center;]

[(G) Texas A&M University College of Medicine;]

[(H) Texas Tech University School of Medicine;]

[(I) Baylor College of Medicine; or]

[(J) University of North Texas Health Science Center at Fort Worth.]

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

#### §172.6. *Visiting Professor Temporary License.*

The board may issue a temporary license to practice medicine to a physician appointed as a visiting professor by a Texas medical school or institution in accordance with this section.

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

(4) The visiting professor temporary license may be issued to one of the following institutions:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline.

~~[(A) University of Texas Medical Branch at Galveston;]~~

~~[(B) University of Texas Southwestern Medical Center at Dallas;]~~

~~[(C) University of Texas Health Science Center at Houston;]~~

~~[(D) University of Texas Health Science Center at San Antonio;]~~

~~[(E) University of Texas Health Center at Tyler;]~~

~~[(F) University of Texas M.D. Anderson Cancer Center;]~~

~~[(G) Texas A&M University College of Medicine;]~~

~~[(H) Texas Tech University School of Medicine;]~~

~~[(I) Baylor College of Medicine; or]~~

~~[(J) University of North Texas Health Science Center at Fort Worth.]~~

(5) - (7) (No change.)

*§172.8. Faculty Temporary License.*

(a) The board may issue a faculty temporary license to practice medicine to a physician in accordance with ~~§ [Section]~~ 155.104, Tex. Occ. Code. "Physician," as used in that statute and in this section, is interpreted to mean a person who holds an M.D., D.O., or equivalent degree and who is licensed to practice medicine in another state or Canadian province or has completed at least three years of postgraduate residency, but does not hold a license to practice medicine in this state.

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

(3) "Institution," as used in this section, shall mean any of the following:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that

exceeds the requirements for eligibility for first board certification in the discipline.

~~[(A) University of Texas Medical Branch at Galveston;]~~

~~[(B) University of Texas Southwestern Medical Center at Dallas;]~~

~~[(C) University of Texas Health Science Center at Houston;]~~

~~[(D) University of Texas Health Science Center at San Antonio;]~~

~~[(E) University of Texas Health Center at Tyler;]~~

~~[(F) University of Texas M.D. Anderson Cancer Center;]~~

~~[(G) Texas A&M University College of Medicine;]~~

~~[(H) Texas Tech University School of Medicine;]~~

~~[(I) Baylor College of Medicine; or]~~

~~[(J) University of North Texas Health Science Center at Fort Worth.]~~

(4) - (5) (No change.)

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

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

Filed with the Office of the Secretary of State on April 22, 2008.

TRD-200802099

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.13

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §172.13. *Conceded Eminence.*

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

(c) An applicant for a license based on conceded eminence must complete an application showing that the applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state accredited by the LCME or AOA;

(B) (No change.)

(C) The University of Texas M.D. Anderson Cancer Center;] or

(D) (No change.)

(2) - (8) (No change.)

(9) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude; and [- And]

(10) (No change.)

(d) - (h) (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 April 22, 2008.

TRD-200802100

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## CHAPTER 182. USE OF EXPERTS

### 22 TAC §182.8

The Texas Medical Board proposes amendments to §182.8, Expert Physician Reviewers.

The amendment to §182.8 clarifies that an expert will be designated who is in the same specialty designated by the Respondent, not necessarily the same specialty as the Respondent Board Certified.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the sections will be to assure that cases are reviewed by expert physicians who practice in the same or similar specialty as the Respondent.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §182.8. *Expert Physician Reviewers.*

(a) Selection of Reviewers. Any complaint alleging a possible violation of the standard of care will be referred to Expert Physician Reviewers who will review all the medical information and records collected by the board and shall report findings in the prescribed format.

(1) Reviewers shall be randomly selected from among those Expert Panel members who practice in the same specialty as the physician who is the subject of the complaint. The practice area or specialty declared by the subject physician as his area of practice shall be the specialty of the expert reviewers.

(2) - (4) (No change.)

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

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

Filed with the Office of the Secretary of State on April 22, 2008.

TRD-200802101

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



## CHAPTER 184. SURGICAL ASSISTANTS

### 22 TAC §§184.1, 184.2, 184.4 - 184.6, 184.8, 184.9, 184.18 - 184.20, 184.26

The Texas Medical Board proposes amendments to §184.1, Purpose, §184.2, Definitions, §184.4, Qualifications for Licensure, §184.5, Procedural Rules for Licensure Applicants, §184.6, Licensure Documentation, §184.8, License Renewal, §184.9, Relicensure, §184.18, Administrative Penalties, §184.19, Complaint Procedure Notification, §184.20, Investigations, and §184.26, Voluntary Relinquishment or Surrender of a License.

The amendment to §184.1 adds a reference to the Medical Practice Act and the Surgical Assistants Act, authorizing rules. The amendment to §184.2 updates the name of the Texas Medical Board. The amendment to §184.4 clarifies the educational requirements to provide that educational programs must be approved by the Commission on Accreditation of Allied Health Education Programs or approved by the Texas Nursing Board or Physician Assistant Board; and clarifies the examination requirements to provide that examinations must be given by the American Board of Surgical Assistants, the National Board of Surgical Technology and Surgical Assisting (NBSTSA), or the National Surgical Assistant Association. The amendment to §184.5 deletes an obsolete provision regarding an applicant who applied prior to September 1, 2002. The amendment to §184.6 updates the reference to alcohol/substance disorder. The amendment to §184.8 clarifies the rule by setting forth requirements that an applicant must furnish supplemental explanations and prohibiting a Surgical Assistant from using the identification as a Surgical Assistant after a license is expired. The amendment to §184.9 provides that a license shall be considered to be canceled if expired for more than one year. The amendment to §184.18 updates rule to refer to rules regarding imposition of an administrative penalty under chapter 187. The amendment to §184.19 updates references to other Board rules. The amendment to §184.20 deletes a misplaced reference to licensure procedure. The amendment to §184.26 corrects the title of Chapter 196 of the Board Rules.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 184.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide clarity by adding references to statutory provisions that authorize the rules; provide clarity by updating the name of the agency; provide clarity to the rules by specifying that educational programs must be approved by one of several specified institutions; avoid confusion in the rules by deleting a provision that is no longer in use; provide a more correct name for impairment due to alcohol or substance use; provide clarity to the rules by specifying that an applicant must furnish supplemental explanation in the case a question on the application is answered in the affirmative, and provides protection for the public by specifying that a person whose surgical assistant license has expired may no longer hold him/herself out as a surgical assistant; provide clarity and conform the rule to actual practice by stating that a license shall be considered canceled if it has been expired for more than one year; establishes that the more efficient procedure for handling administrative violations shall apply to a surgical assistant just as it applies to a physician; provide clarity by updating references to rules of the Texas Medical Board; delete a provision that is not germane to this rule. The provision has been moved to another section; and provide a correction of the title of a section of the Board Rules.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §184.1. Purpose.

These rules are promulgated under the authority Medical Practice Act Title 3, Subtitle B, Tex. Occ. Code and the Surgical Assistants Act, Tex. Occ. Code Ann. Ch. 206. The purpose of these rules is to establish requirements for the education, training, and professional behavior for persons who identify themselves as licensed surgical assistants without a financial burden to the people of Texas. Furthermore, the purpose of these rules and regulations is to also encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to licensed surgical assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in a surgical setting and who are not rendering services as a surgical assistant or identifying themselves as a licensed surgical assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. In addition, nothing in these rules and regulations shall be construed to require licensure as a surgical assistant for those indi-

viduals who are exempted, including registered nurses and physician assistants, under §206.002 of the Act.

#### §184.2. Definitions.

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

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

(6) Board--The Texas Medical Board [~~State Board of Medical Examiners~~].

(7) - (9) (No change.)

(10) Surgical assistant--A person licensed as a surgical assistant by the Texas Medical Board [~~State Board of Medical Examiners~~].

(11) (No change.)

#### §184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) - (12) (No change.)

(13) have successfully completed an educational program as set forth [in surgical assisting or a substantially equivalent educational program as outlined] in subparagraphs (A) and (B) of this paragraph;

(A) A surgical assistant program accredited by Commission on Accreditation of Allied Health Education Programs (CAA-HEP); or

(B) a substantially equivalent program that is one of [is limited to] the following:

~~[(i) a surgical assistant program that is in compliance with the guidelines for program accreditation established by Commission on Accreditation of Allied Health Education Programs (CAA-HEP);]~~

~~(i) [(ii)] a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;~~

~~(ii) [(iii)] a registered nurse first assistant program that is approved by the Texas Board of Nursing for purposes of licensure as a registered nurse by [acceptable to the board]; and~~

~~(iii) [(iv)] an accredited surgical physician assistant program that is approved by the Texas Physician Assistant Board for purposes of physician assistant licensure [acceptable to the board].~~

(C) ~~[(B)] The curriculum of an [a surgical assisting] educational program listed in subparagraphs (A) and (B) of this paragraph must include at a minimum, either as a part of that curriculum or as a required prerequisite, successful completion of college level instruction in the following courses[; with the exception that clauses (iv) and (v) of this subparagraph are not required to be college level instruction]:~~

~~(i) anatomy;~~

~~(ii) physiology;~~

~~(iii) basic pharmacology;~~

~~(iv) aseptic techniques;~~

~~(v) operative procedures;~~

~~(vi) chemistry;~~

~~(vii) microbiology; and~~

~~(viii) pathophysiology. [;]~~

~~[(ix) clinical service rotations, that either:]~~

~~[(f) are each at least 80 hours in length, in the following areas:]~~

~~[(a) cardiovascular surgery;]~~

~~[(b) trauma surgery;]~~

~~[(c) general surgery;]~~

~~[(d) obstetrics and gynecology;]~~

~~[(e) orthopedies;]~~

~~[(f) pediatrics or an elective if the applicant~~

~~affirms that he or she has no intent to work as a surgical assistant for pediatric surgery; or]~~

~~[(H) meet the CAAHEP's supervised clinical preceptorship guidelines.]~~

(14) - (16) (No change.)

(b) An applicant must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:

(1) (No change.)

(2) National Board of Surgical Technology and Surgical Assisting (NBSTSA) formerly known as Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) (No change.)

*§184.5. Procedural Rules for Licensure Applicants.*

(a) (No change.)

~~[(b) An applicant for licensure who applies before September 1, 2002 must submit a preliminary application along with appropriate application fees in order to qualify for the special eligibility provisions under §206.205 of the Act and §§184.4 (b) and (c) of this title (relating to Qualifications for Licensure).]~~

(b) [(e)] The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by the board's licensure committee within 20 days of receipt of such notice, and the executive director may refer any application to the licensure committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons, shall be submitted to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A surgical assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Tex. Gov't Code, Ch. 552. The board may disclose such reports to appropriate licensing authorities in other states.

*§184.6. Licensure Documentation.*

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

(c) Applicants may be required to submit other documentation, which may include the following:

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

(3) Inpatient treatment for alcohol/substance disorder [abuse] or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance disorder [abuse] or mental illness must submit the following:

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

(4) Outpatient treatment for alcohol/substance disorder [abuse] or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance disorder [abuse] must submit the following:

(A) - (C) (No change.)

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

*§184.8. License Renewal.*

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

(e) A licensee shall furnish a written explanation of his or her affirmative answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(f) ~~[(e)]~~ Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

(g) ~~[(f)]~~ Expired Annual Registration Permits.

(1) If a surgical assistant's registration permit has been expired for 90 days or less, the surgical assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, and the penalty fee, as defined in §175.3(2) of this title (relating to Penalties).

(2) If a surgical assistant's registration permit has been expired for longer than 90 days but less than one year, the surgical assistant may obtain a new permit by submitting a completed permit application, the registration fee, and a penalty fee as defined in §175.3(2) of this title ~~[(relating to Penalties)].~~

(3) If a surgical assistant's registration permit has been expired for one year or longer, the surgical assistant's license is automatically canceled, unless an investigation is pending, and the surgical assistant may not obtain a new permit.

(4) A surgical assistant may not hold himself out as a licensed surgical assistant if he holds an expired permit. [Practicing as a surgical assistant after the expiration of the registration permit without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing as a surgical assistant without a license.]

*§184.9. Relicensure.*

If a surgical assistant's license has been expired for one year or longer, the license is considered to have been canceled, unless an investigation is pending, and the person may not renew the license. The surgical assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

*§184.18. Administrative Penalties.*

(a) Pursuant to §206.351 of the Act, the board by order may impose an administrative penalty, in accordance with and subject to

§§187.75 - 187.82 of this title (relating to the Imposition of Administrative Penalty) [the provisions of the APA], against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act [and the APA].

(b) (No change.)

~~[(e) Prior to the imposition of an administrative penalty by board order, a person must be given notice and opportunity to respond and present evidence and argument on each issue that is the basis for the proposed administrative penalty at a show compliance proceeding.]~~

(c) ~~[(d)]~~ The amount of the penalty shall be based on the factors set forth under the Act, §206.351(c) and Chapter 190 of this title (relating to Disciplinary Guidelines).

(d) ~~[(e)]~~ Consistent with the Act, §206.351(e), if the board by order determines that a violation has occurred and imposes an administrative penalty on a person licensed or regulated under the Act, the board shall give notice to the person of the board's order which shall include a statement of the right of the person to seek judicial review of the order.

(e) ~~[(f)]~~ An administrative penalty may be imposed under this section for the following:

(1) failure to timely comply with a board subpoena issued by the board pursuant to §206.308 of the Act and board rules shall be grounds for the imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(2) failure to timely comply with the terms, conditions, or requirements of a board order shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(3) failure to timely report a change of address to the board shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(4) failure to timely respond to a patient's communications shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(5) failure to comply with the complaint procedure notification requirements as set forth in §184.19 of this title (relating to Complaint Procedure Notification) shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(6) failure to provide show compliance proceeding information in the prescribed time shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation; and

(7) for any other violation other than quality of care that the board deems appropriate shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation.

(f) ~~[(g)]~~ In the case of untimely compliance with a board order, the board staff shall not be authorized to impose an administrative penalty without an informal show compliance proceeding if the person licensed or regulated under the Act has not first been brought into compliance with the terms, conditions, and requirements of the order other than the time factors involved.

(g) ~~[(h)]~~ Any order proposed under this section shall be subject to final approval by the board.

(h) ~~[(i)]~~ Failure to pay an administrative penalty imposed through an order shall be grounds for disciplinary action by the board pursuant to the Act, §206.302(a)(4), regarding unprofessional or dishonorable conduct likely to deceive or defraud, or injure the public, and shall also be grounds for the executive director to refer the matter to the attorney general for collection of the amount of the penalty.

(i) ~~[(j)]~~ A person who becomes financially unable to pay an administrative penalty after entry of an order imposing such a penalty, upon a showing of good cause by a writing executed by the person under oath and at the discretion of the Disciplinary Process Review Committee of the board, may be granted an extension of time or deferral of no more than one year from the date the administrative penalty is due. Upon the conclusion of any such extension of time or deferral, if payment has not been made in the manner and in the amount required, action authorized by the terms of the order or subsection (h) ~~[(i)]~~ of this section and the Act, §206.301(a)(4) may be pursued.

#### §184.19. *Complaint Procedure Notification.*

Pursuant to §206.153 of the Act, §178.3 [Chapter 188] of this title (relating to Complaint Procedure Notification) shall govern surgical assistants with regard to methods of notification for filing complaints with the agency. If the provisions of §178.3 of this title [Chapter 188] conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

#### §184.20. *Investigations.*

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

~~[(e) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.]~~

(c) ~~[(d)]~~ Reports to the Board.

(1) Relevant information required to be reported to the board pursuant to §206.159 of the Act, indicating that a surgical assistant's practice poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that a surgical assistant's practice constitutes a continuing threat to the public's welfare shall be made as soon as possible after the peer review committee, quality assurance committee, surgical assistant, surgical assistant student, physician or any person usually present in the operating room, including a nurse or surgical technologist involved reaches that conclusion and is able to assemble the relevant information.

#### §184.26. *Voluntary Relinquishment or Surrender of a License.*

Chapter 196 of this title (relating to Voluntary Relinquishment or Surrender of a Medical License) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 196 of this title conflict with the Surgical Assistant Act or rules under this chapter, the Surgical Assistant Act and provisions of this chapter shall control.

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 April 22, 2008.  
TRD-200802102

Donald W. Patrick, MD, JD  
Executive Director  
Texas Medical Board  
Earliest possible date of adoption: June 8, 2008  
For further information, please call: (512) 305-7016



## CHAPTER 193. STANDING DELEGATION ORDERS

The Texas Medical Board proposes amendments to §193.1, Purpose, §193.2, Definitions, §193.4, Scope of Standing Delegation Orders, §193.6, Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses, §193.7, Delegated Drug Therapy Management, §193.8, Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol, §193.9, Pronouncement of Death, §193.10, Collaborative Management of Glaucoma, and the repeal of §193.11, Use of Lasers.

The amendment to §193.1 updates the name of Texas Medical Board. The amendment to §193.2 updates the name of Texas Physician Assistant Board. The amendment to §193.4 clarifies that pre-signed prescriptions shall be utilized by the authorizing physician only under certain conditions. The amendment to §193.6 clarifies that a supervising physician must be on-site at a practice site serving medically underserved populations at least once every 10 business day, not once every 10 days that the clinic is open, on-site at an alternate practice site at least 20 percent of the time the alternative practice site is open, and must spend a majority of time at a facility-based site; and that charts to be reviewed must be charts of patients that have been seen since the supervising physician's last onsite review. The amendment to §193.7 updates the reference to Texas Pharmacy Act. The amendment to §193.8 updates the reference to Texas Pharmacy Act. The amendment to §193.9 updates the reference to Texas Medical Practice Act. The amendment to §193.10 updates the reference to Texas Optometry Act and name of Texas Medical Board. The repeal of §193.11 will delete the rule regarding use of a laser/pulsed light device.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 193.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the rules by updating the name of the agency; provide clarity by updating the name of the Texas Physician Assistant Board; provide clarity by specifying that pre-signed prescriptions are not authorized except under certain conditions; clarify that the statutory provision requiring that a supervising physician be onsite at a medically underserved site at least once every 10 business days, and that this provision is not prorated based on the number of hours that the site is open for business; provide clarity by updating references to the Texas Pharmacy Act; provide clarity by updating references to the Texas Medical Practice Act; clarify

the rules by updating the name of the agency and the reference to the Texas Optometry Act; and repeal a rule to avoid a piecemeal approach to the regulation of lasers.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

### 22 TAC §§193.1, 193.2, 193.4, 193.6 - 193.10

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §193.1. Purpose.

(a) The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services Texas Occupations Code Annotated, §164.052 and §164.053 empower the Texas Medical Board [State Board of Medical Examiners] to cancel, revoke or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules adopted and that the practice of medicine is, by statute, defined as follows: "A person shall be considered to be practicing medicine within the Medical Practice Act:

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

(b) (No change.)

#### §193.2. Definitions.

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

(1) Advanced practice nurse--A registered nurse approved by the Texas Board of Nursing [Texas State Board of Nurse Examiners] to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, a nurse midwife, nurse anesthetist, and clinical nurse specialist, as defined by Texas Occupations Code Annotated, §301.152.

(2) - (7) (No change.)

(8) Physician Assistant--A person who is licensed as a physician assistant by the Texas Physician Assistant Board [State Board of Physician Assistant Examiners].



(9) - (10) (No change.)

(11) Site serving a medically underserved population--A site located in a medically underserved area; a site located in a health manpower shortage area; a rural health clinic designated under Public Law 95-210, the Rural Health Clinic Services Act of 1977; a public health clinic or a family planning clinic operating under contract with the Texas Department of Human Services or the Department of State Health Services [Texas Department of Health]; a site located in an area in which there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs, as determined by the Department of State Health Services [Texas Department of Health]; or a site that serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs, as determined by the Department of State Health Services [Texas Department of Health].

(12) - (14) (No change.)

*§193.4. Scope of Standing Delegation Orders.*

Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered by physician assistants or advanced practice nurses, as authorized by the Medical Practice Act, Texas Occupations Code Annotated, §§157.051 - 157.060 [457] or §193.6 of this title (relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses). When care is delivered under other circumstances, standing delegation orders may include authority to undertake the following as listed in paragraphs (1) - (8) of this section:

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

(4) the administration or providing of drugs ordered by direct personal or voice communication by the authorizing physician who shall assume responsibility for the patient's welfare, providing such administration or provision of drugs shall be in compliance with other state or federal laws and providing further that pre-signed prescriptions shall ~~not~~ be utilized by the authorizing physician only [except] under the following conditions shown in subparagraphs (A) - (D) of this paragraph.

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

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

(7) the provision of services and the administration of therapy by public health departments as officially prescribed by the Department of State Health Services [Texas Department of Health] for the prevention or treatment of specific communicable diseases or health conditions for which the Department of State Health Services [Texas Department of Health] is responsible for control under state law;

(8) (No change.)

*§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.*

(a) (No change.)

(b) Delegation of prescriptive authority at site serving underserved populations.

(1) (No change.)

(2) Physician supervision at site serving medically underserved populations Physician supervision of a physician assistant or an

advanced practice nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(A) (No change.)

(B) visits the clinic in person at least once every ten business days whether or not the clinic is open daily during regular business hours at a time when [during which] the advanced practice nurse or physician assistant is on site providing care, in order to observe and provide medical direction and consultation to include, but not be limited to:

(i) - (ii) (No change.)

(iii) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the physician of charts for patients seen since the physician's last onsite visit;

(C) - (D) (No change.)

(3) (No change.)

(c) (No change.)

(d) Delegation of prescriptive authority at a physician's alternate practice site.

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

(3) Physician supervision is adequate for the purposes of this subsection if the delegating physician:

(A) is on-site with the advanced practice nurse or physician assistant at least 20 percent of the time that the alternate practice site is open;

(B) randomly reviews at least 10 percent of the medical charts of patients seen by a physician assistant or advanced practice nurse at the site since the physician was onsite last; and

(C) (No change.)

(4) (No change.)

(e) Delegation of prescriptive authority at a facility-based practice site.

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

(3) Physician supervision. Physician supervision of the carrying out and signing of a prescription drug order shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required, although the physician must spend the majority of their time onsite at the facility.

(f) - (i) (No change.)

(j) Violations. Violation of this section by the delegating physician may result in a refusal to approve supervision or the cancellation of the physician's authority to delegate to a physician assistant or an advanced practice nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Act, §164.001, for violation of §164.051. If an advanced practice nurse violates this section or the Act, §§157.051 - 157.060, the board shall promptly notify the Texas Board of Nursing [Texas Board of Nurse Examiners] of the alleged violation. If a physician assistant violates this section or the Act, §§157.051 - 157.060, the board shall promptly notify the Texas Physician Assistant Board [State Board of Physician Assistant Examiners].

(k) (No change.)

(l) Delegation related to obstetrical services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas Board of Nursing [~~Texas State Board of Nurse Examiners~~] as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use of a prescription sticker or the use or issuance of an official prescription form relating to the prescription of Schedule II controlled substance as described under §481.075 of the Health and Safety Code.

(2) - (10) (No change.)

(m) - (n) (No change.)

§193.7. *Delegated Drug Therapy Management.*

(a) - (f) (No change.)

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code Chapter 551 [~~Article 4542a-1, Vernon's Texas Civil Statutes, §17(a)(5)~~].

§193.8. *Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.*

(a) - (f) (No change.)

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code §§554.001 - 554.004 [~~Article 4542a-1, Vernon's Texas Civil Statutes, §17(a)(5)~~].

§193.9. *Pronouncement of Death.*

(a) Purpose. These rules are promulgated under the authority of the Medical Practice Act, §157.001 [~~3-06(d)~~], to allow physicians to receive information from Texas licensed vocational nurses through electronic communication for the purpose of making a pronouncement of death. Electronic communication includes, but is not limited to telephone, facsimile transmission, or electronic mail.

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

§193.10. *Collaborative Management of Glaucoma.*

(a) Purpose. The purpose of this section is to implement the mandate of the 76th Legislature as it relates to the Optometry Act, Texas Occupations Code Chapter 351 [~~Article 4552, §1.02, Vernon's Texas Civil Statutes~~], regarding the minimum standards for the collaborative management of glaucoma.

(b) Minimum requirements. At a minimum, the treating ophthalmologist should follow the guidelines outlined in paragraphs (1) - (10) of this subsection [~~section~~].

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

(5) The ophthalmologist must report any irregular behavior of the optometrist to the Texas Medical Board [~~State Board of Medical Examiners~~] for referral to the Texas Optometry Board.

(6) - (10) (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 April 22, 2008.

TRD-200802103

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



**22 TAC §193.11**

*(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 Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§193.11. *Use of Lasers.*

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 April 22, 2008.

TRD-200802116

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 8, 2008

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



**PART 11. TEXAS BOARD OF NURSING**

**CHAPTER 213. PRACTICE AND PROCEDURE**

**22 TAC §§213.27 - 213.30, 213.33**

The Texas Board of Nursing (Board) proposes amendments to 22 Texas Administrative Code §§213.27, 213.28, 213.29, 213.30, and 213.33, relating to Practice and Procedure. The proposed amendments add language to the foregoing rules regarding the Board's Disciplinary Sanction Policies and its

Disciplinary Guidelines for Criminal Conduct. The modified guidelines were published on March 9, 2007 in the *Texas Register* (32 TexReg 1409). The Board approved modifications to the Board's Eligibility and Disciplinary Sanction Policies pertaining to substance abuse/dependency, lying and falsification, sexual misconduct, and fraud, theft, and deception, and these were published on February 22, 2008 in the *Texas Register* (33 TexReg 1646). These policies and guidelines are referred to by the Staff and Board when determining appropriate decisions in eligibility and disciplinary matters and should, therefore, be included in the Board's rules. The purpose of these policies is to address issues that arise in eligibility and disciplinary matters under Texas Occupations Code §301.452(b) and rules §§213.27, 213.28, 213.29, 213.30, and 213.33.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the five years the proposed amendments are in effect, the public benefit will be that the amendments will provide greater efficiency in the administration of the agency's functions. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendments.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to joy.sparks@bne.state.tx.us, or by fax to Joy Sparks at (512) 305-8101.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

§213.27. *Good Professional Character.*

(a) - (f) (No change.)

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating good professional character in eligibility and disciplinary matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

§213.28. *Licensure of Persons with Criminal Offenses.*

(a) - (l) (No change.)

(m) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

§213.29. *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.*

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

(j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:

(1) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

§213.30. *Declaratory Order of Eligibility for Licensure.*

(a) - (h) (No change.)

(i) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), when recommending a declaratory order of eligibility; and the Board in determining the appropriate declaratory order in eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

§213.33. *Factors Considered for Imposition of Penalties/Sanctions and/or Fines.*

(a) - (g) (No change.)

(h) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), when recommending a sanction; and the Board in determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

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 April 21, 2008.  
TRD-200802087

Joy Sparks  
Assistant General Counsel  
Texas Board of Nursing  
Earliest possible date of adoption: June 8, 2008  
For further information, please call: (512) 305-6824

◆ ◆ ◆  
**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 1. CENTRAL ADMINISTRATION  
SUBCHAPTER D. TEXAS FILM INDUSTRY  
LOAN GUARANTEE PROGRAM**

**34 TAC §§1.330 - 1.332**

*(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §§1.330 - 1.332, concerning general provisions; purposes, limitations, and lender loan requirements; and filing requirements and consideration of the loan guarantee application, for the administration of the Texas Film Industry Loan Guarantee Program. The existing §§1.330 - 1.332 are being repealed pursuant to the expiration of the statute under Sunset Provisions in Government Code, §403.335.

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

Mr. Heleman also has determined that the proposed repeals would benefit the public by removing obsolete references from the comptroller's rules relating to the Texas Film Industry Loan Guarantee Program. The proposed repeal would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposed repeals may be submitted to Don Hoyte, Manager, Regional Fiscal Analysis, LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774-0100.

These repeals are proposed under Government Code, Chapter 403, Subchapter N, §403.335, which authorizes the comptroller to abolish the program when the subchapter expires September 1, 2005.

The repeals implement Government Code, §403.335.

§1.330. *General Provisions.*

§1.331. *Purposes, Limitations, and Lender Loan Requirements.*

§1.332. *Filing Requirements and Consideration of the Loan Guarantee Application.*

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

Filed with the Office of the Secretary of State on April 23, 2008.

TRD-200802134  
Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
Earliest possible date of adoption: June 8, 2008  
For further information, please call: (512) 475-0387



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

#### CHAPTER 373. SUPERVISION

##### 40 TAC §373.3

The Texas Board of Occupational Therapy Examiners proposed amendments to §373.3, concerning Supervision of a Licensed Occupational Therapy Assistant. The section is being amended to clarify the documentation in the COTA Supervision Log.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also 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 amended section will be the understanding of when to document on the COTA Supervision Log. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe St., Suite 2-510, Austin, Texas 78701 or [augusta.gelfand@mail.capnet.state.tx.us](mailto:augusta.gelfand@mail.capnet.state.tx.us).

The amendments are proposed under the Occupational Therapy Practice Act (Act), Title 3, Chapter 356, Subchapter H of the Texas Occupational Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering the Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

##### §373.3. *Supervision of a Licensed Occupational Therapy Assistant.*

(a) A COTA/LOTA shall provide occupational therapy services only under the supervision of a licensed occupational therapist.

(b) Supervision of a full time employed COTA or LOTa by the OTR or LOT includes:

(1) A minimum of six hours a month of frequent communication between the supervising OTR(s) or LOT(s) and the COTA or LOTa by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned, plus

(2) A minimum of two hours of supervision a month of face-to-face, real time interaction with the OTR(s) or LOT(s) observing the COTA or LOTa providing services with patients/clients.

(3) These hours shall be documented on a COTA/LOTA Supervision Log for each employer. The OTR/LOT or employer may request a copy of the COTA Supervision Log. The COTA Supervision Log is kept by the COTA/LOTA and signed by an OTR/LOT when supervision is given.

(c) Licensees working part-time or less than a full month within a given month may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction by the OTR(s) and LOT(s) observing the COTA or LOTa providing services with patients/clients. Those months where the licensee does not work as a therapist, he or she shall write N/A in the COTA Supervision Log for that month.

(d) COTAs or LOTAs with more than one employer must have a supervisor at each job whose name is on file with the board and must receive supervision by an OTR or LOT, as outlined for part-time employment in this section.

(e) The COTA or LOTa must include the name of the supervising OTR or LOT in each patient's treatment note.

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 April 28, 2008.

TRD-200802194  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Earliest possible date of adoption: June 8, 2008  
For further information, please call: (512) 305-6900



#### CHAPTER 375. FEES

##### 40 TAC §375.1

The Texas Board of Occupational Therapy Examiners proposed amendments to §375.1, concerning Fees. The section is being amended to refer licensees to the right section of the rules to read the fee amounts and eliminate the requirements that fees be paid only by check or money order.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also 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 amended section will be the clarification of the reference to the fee schedule. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe St., Suite 2-510, Austin, Texas 78701 or [augusta.gelfand@mail.capnet.state.tx.us](mailto:augusta.gelfand@mail.capnet.state.tx.us).

The amendments are proposed under the Occupational Therapy Practice Act (Act), Title 3, Chapter 356, Subchapter H of the Texas Occupational Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering the Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

§375.1. *Fees.*

(a) Fees are prescribed by the Executive Council and may be subject to change by legislative mandate, refer to 22 TAC §651.1 and §651.3 of the Executive Council Rules. The fees are required to be paid ~~[by check or money order]~~ before a license or a renewal is issued. The application fee will be submitted with the application and is non-refundable.

(b) A cashier's check, certified check, or money order must accompany all future payments to the board after an insufficient funds check has been processed by the board.

(c) An applicant for a license shall pay the application fee plus the appropriate license fee.

(d) The board will not refund any application fee or license fee to an applicant who is denied a license. Applicants requesting that the board cease the license application process shall forfeit all fees paid. Such requests must be received by the board in writing.

(e) There shall be no refunds issued to individuals who have had their licenses suspended or revoked.

(f) Licensees who have had their licenses suspended for failure to pay child support shall pay all applicable fees before licenses will be reissued.

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 April 28, 2008.

TRD-200802195

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: June 8, 2008

For further information, please call: (512) 305-6900



## CHAPTER 376. REGISTRATION OF FACILITIES

### 40 TAC §376.3

The Texas Board of Occupational Therapy Examiners proposed amendments to §376.3, concerning Requirements for Registration Application. The section is being amended to clarify the requirements of the Therapy in Charge form.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also 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 amended section will be the clarification of the therapist in Charge form. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe St., Suite 2-510, Austin, Texas 78701 or [augusta.gelfand@mail.capnet.state.tx.us](mailto:augusta.gelfand@mail.capnet.state.tx.us).

The amendments are proposed under the Occupational Therapy Practice Act (Act), Title 3, Chapter 356, Subchapter H of the Texas Occupational Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering the Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

§376.3. *Requirements for Registration Application.*

(a) Registration applications must include

- (1) name of the Occupational Therapy Facility;
- (2) physical/street address of the Occupational Therapy Facility;
- (3) mailing address, if different from the street address;
- (4) the name and following information about the entity or individual (in the case of a sole proprietorship) holding themselves out as offering occupational therapy services at the facility.

(A) Sole proprietor:

- (i) name, home address, date of birth, social security number of the sole proprietor;
- (ii) federal employer identification number if applicable.

(B) Partnership:

- (i) name, home address, date of birth, social security number of the managing partner;
- (ii) federal employer identification number.

(C) Corporation:

(i) names, home addresses, dates of birth, and social security numbers of managing officers (for purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of occupational therapy Facility operations);

(ii) federal employer identification number.

(D) Governmental entity (federal, state, county, local):

(i) name, home address, date of birth, social security number of the individual completing the application;

(ii) federal employer identification number;

(5) the name and license number of the OTR or LOT in Charge and his or her notarized signature;

(6) the names and license numbers of other licensees of the Act who practice in the Occupational Therapy Facility;

(7) the Social Security Number and notarized signature of the individual, managing partner or officer or person authorized to complete the form;

(8) the non-refundable application fee, as set by the Executive Council;

(b) An individual or entity that holds themselves out as offering occupational therapy at more than one facility is required to submit one primary facility application and an additional facility application for each additional Occupational Therapy Facility registered.

(c) Such additional Occupational Therapy Facility that is registered less than six months before the primary facility registration expires will receive an expiration date in the same month as the primary, but in the following year. An additional Occupational Therapy Facility registered six or more months before the primary facility expiration date will receive the same expiration date as for the primary facility.

(d) An Occupational Therapy Facility that has not been registered previously must complete the registration process and have the registration certificate before the first patient treatment.

(e) The Occupational Therapy Facility application is valid one year after it is received by the board.

(f) The Occupational Therapy Facility will be charged a registration fee(s) for the primary site(s) and/or additional site(s). In some cases an OT linked facility fee may apply. An OT linked facility is a facility in which PT services are already registered at the same location with the same owner(s). If the PT facility registration is not current, full OT registration must be paid.

(g) The Occupational Therapy Facility registration fee(s) for the primary site and/or additional site(s) will be waived in circumstances which are temporary in nature, such as a natural disaster or events for special populations, such as the Special Olympics.

(h) Waiver from Occupational Therapy Facility registration fees does not nullify all other sections as set forth in the TBOTE Rules, Chapter 376.

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 April 28, 2008.

TRD-200802196

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: June 8, 2008

For further information, please call: (512) 305-6900



#### 40 TAC §376.4

The Texas Board of Occupational Therapy Examiners proposed amendments to §376.4, concerning Requirements for Registered Facilities. The section is being amended to clarify when new facility registration and/or renewal forms must be ordered.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also 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 amended section will be the clarification of the facility registration and/or renewal needs to be ordered. There will be a small effect on small businesses, and small economic cost to persons having to comply is anticipated. The cost is \$30 for a replacement.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe St., Suite 2-510, Austin, Texas 78701 or [augusta.gelfand@mail.capnet.state.tx.us](mailto:augusta.gelfand@mail.capnet.state.tx.us).

The amendments are proposed under the Occupational Therapy Practice Act (act), Title 3 Chapter 356, Subchapter H of the Texas Occupational Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering the Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

#### §376.4. Requirements for Registered Facilities.

(a) Each facility must have a designated OTR or LOT-in-charge. A registered facility is required to report the name and license number of the new OTR or LOT-in-charge no later than 30 days after the change occurs.

(b) A registered facility must display the registration certificate in a prominent location in the facility where it is available for inspection by the public. A registration certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(c) A registered Occupational Therapy Facility is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the board at any reasonable time.

(d) An individual or entities that registers a facility under this Rule must notify the board within 30 days of any change to the name, physical/street address or mailing address. In the event of a name or physical address change, the owner must obtain a new registration certificate and renewal certificate (if applicable), showing the correct information.

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 April 28, 2008.

TRD-200802197

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: June 8, 2008

For further information, please call: (512) 305-6900



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

## SUBCHAPTER N. STATE HIGHWAY PROJECTS FINANCED THROUGH THE ISSUANCE OF BONDS AND OTHER PUBLIC SECURITIES

### 43 TAC §§15.170 - 15.173

The Texas Department of Transportation (department) proposes amendments to §15.170, purpose, §15.171, definitions, §15.172, applicability, and §15.173, state highway improvement projects, concerning state highway projects financed through the issuance of certain bonds and other public securities.

#### EXPLANATION OF PROPOSED AMENDMENTS

The amendments conform 43 TAC Chapter 15, Subchapter N to the changes made to Transportation Code, §222.003 by Senate Bill 792, 80th Legislature, 2007. Senate Bill 792 increased the annual bond issuance limit for bonds and other public securities secured by the state highway fund from \$1 billion to \$1.5 billion; increased the maximum aggregate issuance limitation from \$3 billion to \$6 billion; and increased the amount allocated to highway safety projects from \$600 million to \$1.2 billion. By deleting from the rules the amounts specified by the statute, the amendments remove the current and potential future discrepancies between the rules and statute, particularly with respect to the amount of bonds that the department may issue under 43 TAC Chapter 15, Subchapter N. Additionally, minor wording changes have been made to clarify the rules and to ensure consistency in terminology.

Amendments to §15.170, Purpose, delete references to the specific dollar amounts of the annual bond issuance limit, and the maximum aggregate bond issuance limit which are specified in Transportation Code, §222.003 and subject to change by the legislature. The specific amounts are replaced with a reference to the statute, thereby removing current and potential future discrepancies between the rules and statute.

Amendments to §15.171, Definitions, delete the definition of Trans-Texas Corridor because the only use of the term in the subchapter is being removed from §15.172 for the reasons set out in the explanation of amendments to that section. The amendments renumber the remaining definitions accordingly.

Amendments to §15.172, Applicability, delete references to the specific project and dollar amount limitations and insert references to relevant provisions of Transportation Code, §222.003 to more accurately reflect the prohibited uses of bond proceeds and describe the bond amount limits prescribed by the legislature. Senate Bill 792 amended Transportation Code, §222.003(d) to change the amount of the proceeds that are required to be used for highway safety projects. As a result the statute and the rules conflict, and in such a situation, the statute controls. Transportation Code, §222.003(e) prohibits the use of bond proceeds for an array of projects, of which §15.172 lists only facilities on the Trans-Texas Corridor. The amendments delete the reference to the Trans-Texas Corridor and substitute a reference to the statute thus capturing the prohibition of the use of the bond proceeds for all current and future prohibited uses.

Amendments to §15.173, State Highway Improvement Projects, delete language limiting the use of bond proceeds for projects or programs in the Unified Transportation Program to only those that would be accelerated, thereby making the funds available for use on more state highway improvement projects. Addition-

ally, the amendments add as an eligibility criterion consideration of the potential of a project to be classified as a safety project.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Bass has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more efficient administration of the state highway fund bond funding program. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§15.170 - 15.173 may be submitted to James Bass, Chief Financial Officer, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 9, 2008.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §222.003, which requires the commission to by rule prescribe criteria for selecting projects eligible for funding under the state highway fund bond program.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §222.003.

##### *§15.170. Purpose.*

Transportation Code, §222.003, allows the Texas Transportation Commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund. Proceeds from the sale of these bonds and other public securities must be used to fund state highway improvement projects, subject to the limitations provided in that section. [~~A maximum of \$1 billion per year in debt may be issued not to exceed an aggregate principal amount of \$3 billion.~~] This subchapter describes [~~prescribes~~] the criteria and policies [~~and procedures~~] that will be used to select projects.

##### *§15.171. Definitions.*

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

(1) - (16) (No change.)

~~[(17) Trans-Texas Corridor--The statewide system of multimodal facilities under the jurisdiction of the department that is designated by the commission under Transportation Code, Chapter 227.]~~

~~[(17) [(18)] Texas Highway Trunk System--A planned rural network of four or more lane divided roadways that will serve as a principal connector for Texas cities of greater than 20,000 population as well as major ports and points of entry.~~



(18) [(19)] Unified Transportation Program--The 10-year financial plan of the Texas Department of Transportation outlining project development and construction.

§15.172. *Use of Proceeds [Applicability].*

(a) Transportation Code, §222.003(e) establishes certain prohibitions on the use of proceeds from the sale of the bonds [Proceeds from the sale of these bonds may not be used to construct a state highway or other facility on the Trans Texas Corridor].

(b) The proceeds of the bonds authorized by Transportation Code, §222.003 shall be used to fund state highway improvement projects. Transportation Code, §222.003(d), allocates a specified portion of those proceeds to safety projects [Transportation Code, §222.003(d), requires at least \$600 million of the aggregate debt limit of \$3 billion be used for safety projects. The remainder of the funding may be used for state highway improvement projects, including safety projects].

§15.173. *State Highway Improvement Projects.*

(a) Eligibility. Projects or programs contained in the department's Unified Transportation Program [~~and which would be accelerated,~~] are eligible for funding.

(b) Selection criteria. The department will consider one or more of the following criteria in selecting projects for funding under this section:

- (1) - (4) (No change.)
- (5) feasibility of the project; [~~and~~]
- (6) traffic volume; and [-]
- (7) the potential of the project to qualify as a safety project.

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 April 25, 2008.

TRD-200802173

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: June 8, 2008

For further information, please call: (512) 463-8683



# 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 40. SOCIAL SERVICES AND ASSISTANCE

### PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

#### CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

##### SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

##### DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

##### 40 TAC §109.243

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Texas Department of Assistive and Rehabilitative Services, withdraws the emergency amendment

to §109.243, relating to Board for Evaluation of Interpreters and Interpreter Certification, which appeared in the February 1, 2008, issue of the *Texas Register* (33 TexReg 817).

Elsewhere in this issue of the *Texas Register*, the Texas Department of Assistive and Rehabilitative Services contemporaneously adopts the amendment to §109.243, which was proposed in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2270). The adopted amendment to §109.243 will supersede the emergency amendment to §109.243. The withdrawal and the adoption of §109.243 are both effective May 15, 2008.

Filed with the Office of the Secretary of State on April 24, 2008.

TRD-200802166

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: May 15, 2008

For further information, please call: (512) 424-4050



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 8. AGRICULTURAL HAZARD COMMUNICATION REGULATIONS

##### 4 TAC §8.2, §8.11

The Texas Department of Agriculture (the department) adopts amendments to §8.2, concerning definitions, and §8.11, concerning training programs provided by the department for agricultural laborers, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2098).

The amendment to §8.2 is adopted to amend the definition of "Service" to reflect the name change from the Texas Cooperative Extension Service to the Texas AgriLife Extension Service. The amendment to §8.11, relating to counties in which the department has the responsibility to provide training programs, is adopted to specify the counties in which the department has primary responsibility for administering and providing for training programs for agricultural laborers. The amendment to §8.11 is further made to comply with §125.009 of the Texas Agriculture Code, which requires that the department in conjunction with the Texas AgriLife Extension Service shall develop an on-going training program for agricultural laborers. The department is required to provide training in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The department may also provide training in additional counties that it has determined that a significant farm labor work force exists. The specific change made to §8.11(b)(1) identifies counties that have a farm labor work force of 2,000 or more according to the 2002 United States Census of Agriculture. The specific change to §8.11(b)(2) identifies those counties that the department has determined have a significant farm labor work force and the department will continue to provide on-going training programs in those counties.

No comments were received on the proposal.

The amendments to §8.2 and §8.11 are adopted under the Texas Agriculture Code §125.014, which provides the Texas Department of Agriculture with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 125 of the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on April 25, 2008.

TRD-200802189

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: May 15, 2008

Proposal publication date: March 14, 2008

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



#### CHAPTER 23. ROSE GRADING

##### 4 TAC §23.4

The Texas Department of Agriculture (the department) adopts an amendment to §23.4, concerning Rose Grading, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2099).

The amendment is adopted to correct an error in the rose grading caliper specification chart found in §23.4(c)(5). The amendment changes the No. 1 1/2 Grade for Polyantha, Shrub Landscape, and Low Growing Floribunda Roses caliper from 1/16 to 2/16, which is the correct caliber and the caliber actually required by the department for the No. 1 1/2 grade.

No comments were received on the proposal.

The amendment to §23.4 is adopted under the Texas Agriculture Code, §121.007, which provides the department with the authority to adopt rules necessary for the inspection, grading, and labeling of all rose plants sold or offered for sale in 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.

Filed with the Office of the Secretary of State on April 25, 2008.

TRD-200802190

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: May 15, 2008

Proposal publication date: March 14, 2008

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



#### CHAPTER 29. ECONOMIC DEVELOPMENT

The Texas Department of Agriculture (the department) adopts the repeal of Chapter 29, Subchapter B, §§29.20 - 29.25 and §§29.30 - 29.32, concerning the department's Texas Yes! Program rules, and the addition of new Chapter 29, Subchapter B, §§29.20 - 29.33, providing for the new GO TEXAN Rural Com-

munity Program (the Program) and use of the GO TEXAN certification mark in conjunction with this Program with changes to the proposal published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2426). The department is repealing the Texas Yes! Program rules in order to establish a similar, new program to support and promote Texas' rural communities. The department has a highly successful GO TEXAN certification mark used to designate Texas products and certified retirement communities and the department will utilize a like certification mark for rural communities who meet specific eligibility requirements to capitalize on the name recognition associated with that mark. The department anticipates that implementation of the new sections will result in an increase in economic activity in rural Texas communities by providing communities with a more effective tool to market and promote themselves as a desirable rural community or travel destination. New §29.21 is adopted with a change to paragraph (4), the definition of Certified member, to correct an error in a section reference. The last word in the title of §29.23, as referenced in this definition, is changed from "Associate" to "Application". New §29.20 and §§29.22 - 29.33 are adopted without changes and will not be republished.

New §29.20 states the purpose of the Program. New §29.21 provides the Program's definitions as used in the new rules. New §29.22 provides for the department's administration of the program. New §29.23 provides the eligibility and application requirements for becoming a certified member of the Program. New §29.24 provides the eligibility and application requirements for becoming an associate member in the Program. New §29.25 provides the process for submission and review of applications and new §29.26 explains how an application determination can be appealed. New §29.27 provides the reasons for which an application may be denied. New §29.28 provides for the registration of those applicants who are approved to use the Mark and new §29.29 provides guidelines for use of the Mark, generally. New §29.30 provides for the termination or revocation for a license to use the Mark. New §29.31 describes the benefits of membership available to each certified or associate members. New §29.32 provides the membership expiration timeline and membership renewal guidelines. New §29.33 provides for the continued use of the "Texas Yes!" beyond the termination date of the program rules.

No comments were received on the proposal.

## SUBCHAPTER B. "TEXAS YES!" PROGRAM RULES

### DIVISION 1. GENERAL RULES

#### 4 TAC §§29.20 - 29.25

The repeal of §§29.20 - 29.25 is adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

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 April 22, 2008.

TRD-200802129

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Effective date: May 12, 2008  
Proposal publication date: March 21, 2008  
For further information, please call: (512) 463-4075



## DIVISION 2. USE OF THE "TEXAS YES!" MARK

#### 4 TAC §§29.30 - 29.32

The repeal of §§29.30 - 29.32 is adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

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 April 22, 2008.

TRD-200802130  
Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Effective date: May 12, 2008  
Proposal publication date: March 21, 2008  
For further information, please call: (512) 463-4075



## SUBCHAPTER B. GO TEXAN RURAL COMMUNITY PROGRAM RULES

#### 4 TAC §§29.20 - 29.33

New §§29.20 - 29.33 are adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

#### §29.21. Definitions.

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

- (1) Applicant--A person submitting application for GO TEXAN Rural Community certified membership or associate membership.
- (2) Application--Written request for GO TEXAN Rural Community certified membership or associate membership in the format required by the department.
- (3) Associate member--A person who wishes to support rural communities in Texas and who is granted limited GO TEXAN Rural Community membership and limited rights to use the mark to support a rural community eligible to apply for a GO TEXAN Rural Community certified membership.
- (4) Certified member--Any community that is granted a GO TEXAN Rural Community certified membership and is either

a non-metropolitan county, or a Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more and actively engages in community improvement as set forth in §29.23(b) and (c) of this title (relating to Eligibility for Certified Membership; Application).

(5) Commissioner--The Commissioner of the Texas Department of Agriculture.

(6) Department--The Texas Department of Agriculture.

(7) Guidelines--Guidelines promulgated by the department for completing the application for the program and administration of the program.

(8) Licensee--An applicant approved for GO TEXAN Rural Community certified or associate membership and authorized to use the GO TEXAN Mark.

(9) Mark--The GO TEXAN certification mark, consisting of "GO TEXAN" and Design. The mark is pending final registration approval with the United States Patent and Trademark Office.

(10) Non-metropolitan county--A Texas county that is not located in or does not encompass a metropolitan statistical area, as identified by the U.S. Census.

(11) Person--An individual, firm, partnership, corporation, governmental entity, cooperative organization, or association of individuals.

(12) Program--The GO TEXAN Rural Community Program.

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 April 22, 2008.

TRD-200802131

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: May 12, 2008

Proposal publication date: March 21, 2008

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



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

##### DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

###### 16 TAC §25.213

The Public Utility Commission of Texas (commission) adopts new §25.213, relating to Metering for Distributed Renewable Generation with changes to the proposed text as published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1483). The new rule will establish a definition for metering as it relates to interconnected distributed renewable generation (DRG). The provision of metering as required by the new rule will satisfy the requirements for metering pursuant to Public Utility Regulatory Act (PURA) §39.914(d) and §39.916(f). This threshold issue is being addressed first in Project Number 34890 to provide sufficient clarity for the Electric Reliability Council of Texas (ERCOT) to begin development of profiles needed to settle sales of DRG by January 1, 2009 as required by PURA §39.916(j). The commission plans to complete the remainder of Project Number 34890 in the fourth quarter of 2008. This new rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This new section is adopted under Project Number 34890.

On March 13, 2008, the commission received written comments from the following: The Alliance for Retail Markets and the Texas Energy Association for Marketers (collectively, "ARM and TEAM"); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively, "Joint TDUs"); Interstate Renewable Energy Council (IREC); The Lone Star Chapter of the Sierra Club (Sierra Club); Public Citizen, Environmental Defense, and Sustainable Energy & Economic Development Coalition (collectively, "Public Citizen *et al.*"); Reliant Energy (Reliant); The Solar Alliance, Texas Renewable Energy Industries Association, and the Texas Solar Energy Industries Association (collectively, "Joint Renewable Commenters"); Texas Industrial Energy Consumers (TIEC); and, TXU Energy Retail Company (TXU Retail).

In the preamble to the proposed rule, the commission put forth the following question for comment:

*Should there be a standard tariff for transmission and distribution utilities, excluding river authorities, for the provision of metering for distributed renewable generation?*

Joint Renewable Commenters, Reliant, and TXU Retail supported the development of a standard tariff. Joint Renewable Commenters commented that a standardized tariff would ensure that all customers would have access to the same meter functionality at the same cost, no matter where they were located within ERCOT, or which transmission and distribution utility (TDU) was responsible for delivering energy. Joint Renewable Commenters cautioned, however, that a standard tariff would provide benefit only if it contains specific language regarding the deployment of meters and the manner and amounts in which meter charges are assessed. Reliant supported a standard tariff if the intent of the tariff was to stipulate the types of meters and charges that apply when the TDU, upon request from a DRG customer, installs meters for net metering service. Reliant opined that a standardized tariff would be consistent with the commission's finding in Project Number 29637 that more standardization will facilitate retail electric provider (REP) participation in the retail market in all of the TDU service areas. While TXU Retail recognized that transmission and distribution charges may vary, it supports the idea of a standard tariff for TDUs to address the provisions of DRG metering.

ARM and TEAM, Joint TDUs and Sierra Club, on the other hand, did not see the need for the adoption of a standard tariff for DRG

metering. Joint TDUs commented that a DRG owner's service is already covered by the commission's pro forma base tariff schedules. A standardized tariff should focus on customer impacts rather than specific TDU processes or meter types and metering tariff provisions for this rule should be clearly distinguished from the meter standards developed for advanced metering in Project Number 31418, according to Joint TDUs. While noting that standard tariff provisions already exist for distributed generation (DG) interconnection standards and forms, Joint TDUs claimed that the costs for the service should be TDU-specific. Nonetheless, Joint TDUs offered to develop a standard provision to be included in terms and conditions for DRG metering, as well as standard discretionary services and associated fees, as part of the second phase of this project, a more comprehensive rulemaking implementing the distributed renewable provisions of House Bill (HB) 3693 (en acted during the 80th session of the Texas Legislature).

ARM and TEAM opined that the provisions in the pro forma tariff for retail delivery service in §25.214(d)(1) (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) that address metering will likewise apply to meters provisioned pursuant to this proposed section. ARM and TEAM commented that each TDU must submit a company-specific tariff for metering in compliance with proposed subsection (b)(5) and this tariff would reflect charges recovering the differential cost of the metering required to achieve compliance, unless the meter was provided at no additional cost, as required by proposed subsection (b)(4). ARM and TEAM noted that any proposed charges in TDU tariffs are subject to review by interested parties and must meet the statutory "just and reasonable" requirement before they are approved by the commission. Sierra Club contended that because all exported energy is delivered to another customer (with an associated delivery charge), the TDU is automatically reimbursed for exported energy without any need for a separate export charge or standard tariff. Sierra Club urged the commission to eliminate barriers such as a standard tariff requirement for TDUs for distributed generators that otherwise restrict a customer's options to generate a part of their own power.

#### *Commission response*

Consistent with its determination in Project Number 29637, the commission agrees with Reliant that a standard tariff will facilitate REP participation in the market in all of the TDU service areas and will also benefit customers with facilities in multiple TDU areas. The commission does not agree with Joint Renewable Commenters that the charges should be the same in all TDU areas, as each TDU will have different costs and should recover those unique costs. Additionally, the commission agrees with the Joint TDUs that this issue should be undertaken in the more comprehensive rulemaking and therefore defers the standardization to that project. Other comments on the tariff provisions, such as the standard of review, need not be addressed now, but may be raised in connection with the commission's consideration of the issue later in the project. The commission does not concur with Sierra Club's view that standardizing tariff provisions relating to DRG is an obstacle to deployment of this technology. Tariffs will be required for the TDUs to provide services related to these meters. Standardization will facilitate deployment by making the terms and conditions uniform across much of Texas.

#### *General Comments:*

IREC voiced concern that Texas has lost the "net" in net metering. IREC believed that it is essential to address the defini-

tion of net metering and offered its position that net metering is the difference between electricity that is supplied by an electric provider and the electricity that is generated by DRG and fed back to the electric provider over the distributed renewable generation owner's (DRGO's) billing period. IREC stated that every state uses some variant of the "billing period" concept in its definition of net metering such that the "netting" occurs over a month or a year, and that 11 states deemed by the Alliance for Retail Choice as having made "medium to good progress in retail electric choice" have adopted net metering definitions that include netting of in-flows and out-flows. IREC asserted that Texas is alone in contemplating that netting only occurs over 15 minute intervals and what Texas is contemplating is not net metering as the term is commonly understood. IREC pointed out that net metering provides an important incentive for investment in DRG in that it allows customers to "bank" their energy and use it at a time other than when it is produced, giving flexibility to the customer and allowing them to maximize the value of their production. IREC pointed out that the key benefit to net metering is that it enables customers to use their own generation to offset consumption over a billing period, meaning customers receive retail prices for the excess electricity they generate within a billing period.

Public Citizen *et al.* argued that the best net metering regulations among the states allow full retail credit with no subtractions, protect customers from additional fees and charges and encourage the use of DRG. They suggested that, while it appears to allow deduction of delivery charges for net energy reductions, this rule as proposed protects the utility's interests but places the customer in a position of risk and disadvantage in the market, as it appears to place the burden of any cost differential on the generator, falling most heavily on the small renewable generators.

TIEC stated that having a single meter running forward if the customer is consuming energy from the grid and running backward if the customer is sending energy to the grid, arriving at a "net" quantity of energy consumed over a given period is not an appropriate method for metering in the current ERCOT market structure and will create distortion and inaccuracies that run counter to PURA and the ERCOT protocols.

Reliant suggested that the term "net metering services" be used to be more consistent with PURA §39.914(c) and §39.916(j).

#### *Commission response*

The commission does not find the position of IREC and Public Citizen on netting over the billing period to be consistent with PURA §39.914(d) and §39.916(f) and therefore declines to amend the proposed language. The commission notes that "net metering" is a defined term in 16 U.S.C.A. §2621(11) and has various applications in other markets. It is often used to refer to "retail roll backs" or "banking" of electricity, whereby the meter for a retail electric customer that produces electricity is allowed to roll backwards as the DRG (1) produces more electricity than is consumed by the customer's load and (2) places such surplus electricity on the distribution network. All charges incurred by such a retail electric customer for power the customer actually consumes from the grid at other times during the billing period are reduced or eliminated by these "retail roll backs" or "banking." However, the commission does not find that PURA §39.914 or §39.916 mandates the concepts of "retail roll backs" or "banking" as described above. Additionally, PURA §39.914(d) and §39.916(f) stipulate that meters for DRG be capable of measuring in-flows and out-flows. Meters with only one register, as is true of meters that are acceptable in at

least six of the 11 states that IREC cites as having acceptable definitions of net metering, cannot fulfill this requirement.

The commission further declines to amend the language consistent with the comments of IREC and Public Citizen *et al.* that customers should receive retail prices for energy they export to the grid. PURA §39.914(c) and §39.916(j) state that the price for energy sold by the DRGO shall be at a value to which both parties agree. PURA §39.914(c) and §39.916(j) further suggest that a possible outcome of such an agreement might be the wholesale clearing price of the energy at the time of day that it is made available to the grid. Absent the ability to quantify out-flows, there is no basis for the DRGO and REP to determine when the energy is made available and arrive at the value of this energy in the wholesale market. Thus, under PURA, it is not sufficient merely to quantify the difference between in-flows and out-flows.

Regarding Public Citizen *et al.*'s concern that any cost differentials for meters be borne by the DRGO, this requirement is addressed by PURA §39.914(d) and §39.916(f), which require that the DRGO pay the differential cost of the metering unless the meters are provided at no additional cost. The commission thus makes no changes to the rule language based on this comment.

The commission further declines to adopt IREC and Reliant's suggested language because use of the term "net metering service" could be confusing, for the reasons discussed above, and is not necessary to implement the statute.

The Solar Alliance *et al.* believed that the proposed rule settles the question surrounding the definition of "net" in net metering, by clarifying that there is to be no netting of outflows against inflows in the settlement process. The Solar Alliance agreed that this outcome was consistent with HB 3693's specific language and intent. They stated that benefits can be achieved under this interpretation if alternative profiling methods are developed and made available to reflect the time of generation for DRG resources, especially solar, in settlement. The Solar Alliance opined and Sierra Club agreed that the implementation of accurate profiling is a necessary condition for enabling DRGOs to earn a fair market value for the load reduction benefits they provide to the grid and supported the direction and efforts of ERCOT staff and the Profiling Working Group in this regard. Specifically, the Solar Alliance strongly supported the development of separate profiled treatment of both consumption and surplus generation that reflects the time of generation of solar DG. They encouraged the commission to support these efforts as well, because they believe that a settlement solution that fails to account for the time of generation of solar resources will result in a market failure, effectively preventing REPs from being able to offer owners of solar DG resources a fair market value for the energy they produce. Sierra Club and TIEC agreed that the settlement should reflect the full value of energy produced including the value at peak demand periods.

TIEC did not believe a profiling approach was the most accurate way of accounting for the amount of energy consumed and exported in given time periods and suggested that a better approach would be to measure in-flow and out-flow separately with advanced meters. ARM and TEAM expressed support for the rule's requirement for separate measurement of and accounting for energy delivered to the customer and surplus generation delivered from the customer to the distributed network, and stated that this functionality is essential in the competitive Texas energy market for accurate customer compensation for surplus generation, settlement, customer billing and assessment of fees for TDU services and the system benefit fund assessment.

#### *Commission response*

The commission adds language as suggested by Solar Alliance *et al.* and Sierra Club to the rule to reflect that ERCOT procedures will account for time of generation in the settlement process. The commission concurs with TIEC with regard to the use of advanced meters to account for time of generation, but as advanced meters are not generally available at this time, the language in the rule allows for ERCOT to employ profiling as a means of accounting for time of generation.

IREC suggested a definition of "outflow" be included in the rule with the meaning, "energy produced by distributed renewable generation and delivered to the distribution network."

#### *Commission response*

The commission reads "out-flow" to be synonymous with "surplus electricity."

The Sierra Club believed that small DG systems should be able to interconnect simply and without time delays and extra charges and that if DG becomes saturated in the market then the rules can be revisited to assure fairness for both customers and utilities, but at the moment, renewable DG must be promoted and made easy for all potential generators.

#### *Commission response*

The commission agrees that DG systems should be able to interconnect without excessive burden and plans to address that issue in the second rule in this project.

#### Subsection (a)

The Sierra Club recognized that the PUC does not have the authority to require municipalities and cooperatives to follow the proposed rules but suggested that language be added to encourage municipalities and cooperatives to follow these or similar rules. The Sierra Club also stated its belief that other types of energy generation, such as combined heat and power systems that are not strictly renewable should be allowed to interconnect and sell energy back to the grid.

#### *Commission response*

The commission declines to adopt the Sierra Club recommendation. While the customers of cooperatives and municipally owned electric utilities might benefit from standardized rules regarding DRG, PURA §39.002 specifically exempts municipally owned and cooperative electric utilities from the requirements of PURA §39.914 and §39.916.

The commission declines to include non-renewable distributed generation in this rule, because the rule is being adopted specifically to satisfy the requirements of PURA §39.914(d) and §39.916(f). PURA §39.914(d) specifically addresses certain solar applications, and PURA §39.916(a)(1) defines DRG, and limits DRG to the definition of renewable energy technology in PURA §39.904(d). Adding non-renewable distributed generation would be out of the scope of the language as proposed, and inconsistent with the intent of the sections being implemented. Special rules for the interconnection of combined heat and power facilities that meet the definition of distributed generation already exist in other provisions of Chapter 25.

Joint TDUs proposed adding the 2,000 kilowatt (kW) limitation from HB 3693. They also proposed that compliance with other commission interconnection rules be specified in the application section.

*Commission response*

The commission adopts language in subsection (b)(2) to incorporate the 2,000 kW limitation from HB 3693.

The commission declines to take up the issue regarding compliance with other commission interconnection rules in this rule-making, as they will be addressed in the second phase of this project.

*Subsection (b)(1)*

Reliant suggested that the subsection be clarified to indicate that TDUs will be reporting metered values to "the entity responsible for settlement." Reliant further suggested that because ERCOT is the entity that accounts for energy use the rule should be modified to indicate that ERCOT would be accounting for metered values in settling the total load of the serving REP.

*Commission response*

The commission agrees with the suggestion of Reliant that referring to "the entity responsible for settlement" provides greater clarity to the rule and includes this phrase in subsection (b)(1).

TXU Retail supported the language with respect to small owners of DRG who desire to measure their surplus generation, but opined that there was a need for language addressing those DRG owners who did not wish to measure surplus generation. It further stated that the rule should address large DRG customers. It said that it supported the metering options in this paragraph for DRG owners who desire to measure surplus generation and those who do not, and proposed removing the phrase "and that desires to measure the generation's surplus electricity production." TXU Retail expressed its support of the ERCOT Distributed Generation Task Force (DGTF) recommendation that DRG greater than 50 kW but less than two megawatts (MW) be metered by using interval data recorder (IDR) meters.

TXU Retail stated that it did not oppose earlier comments by Oncor and TNMP supporting meters rendered incapable of "spinning both ways" for customers who did not wish to measure their surplus generation and offered new language should this approach be adopted. The joint TDUs also supported this position.

*Commission response*

The commission agrees and adopts the language suggested by TXU Retail. The commission also notes that nothing in this rule requires replacement of existing IDR meters. The rule does not require the use of IDR meters for a customer with DRG less than 50 kW. However, if either the load or the DRG capacity is required to be settled on IDR data, both will be settled using IDR data rather than through the use of profiling.

IREC stated that, although net metering can be accomplished with a simple bi-directional meter, HB 3693 calls for a meter capable of measuring in-flows and out-flows. It suggested that the rule specify that TDUs install the lowest cost meter capable of providing the data required.

*Commission response*

The commission declines to adopt this change. While the commission is sensitive to the issue that IREC raises, it does not agree that it is appropriate to prescribe the use of the lowest cost meters in the rule. The commission expects TDUs to have cost effective metering systems. However, the commission recognizes that each of the TDUs has had the ability to select meter systems from different manufacturers, and the lowest cost meters may not necessarily be compatible with each TDU's existing

system, or be the most cost effective for each TDU to implement and maintain.

TXU Retail proposed that the term "premise" be replaced with "side of the meter" to be consistent with PURA §39.916(a).

*Commission response*

The commission agrees and adopts the proposed language.

Reliant proposed that the rules ensure that a TDU is not required to install net metering until it has verified that the customer has complied with all the technical requirements, rules or processes for interconnection.

*Commission response*

As this issue will be addressed in the second phase of this project, the commission declines to take up this issue in this rulemaking.

Reliant proposed that it be made clear that the surplus electricity generation that the DRG owner desires to measure is electricity being delivered from the DRG owner's premises to the distribution network.

*Commission response*

The commission acknowledges that surplus electricity generated by DRG will flow to the distribution network and is adopting the proposed language for clarity.

The Joint TDUs suggested that the last sentence be changed to provide that the two metered values "shall" rather than "should" be separately accounted for.

*Commission response*

The commission agrees and makes this change accordingly.

Sierra Club of Texas, expressing concern over the cost of special metering for DRG, suggested that the commission show preference for use of single advanced meters with time bin carryover for DRG applications and that meters capable of "spinning both ways" be used until advanced meters are available.

*Commission response*

The commission declines to adopt the proposed language. The commission finds, as discussed above, that the use of meters that "spin both ways" is inconsistent with PURA §39.914(d) and §39.916(f).

*Subsection (b)(2)*

The Joint TDUs commented that the permission for a TDU to charge for electricity consumption in its tariff should be made mandatory consistent with PURA §36.004. ARM and TEAM said that, given the separate measurement of load and surplus generation, the purpose of this provision was unclear. They further offered language to clarify the DRGO's option to choose a metering methodology appropriate for the DRGO's preferences regarding measurement of surplus electricity and the capacity of the DRG.

*Commission response*

The commission agrees with the Joint TDU's proposed language as it ensures non-discriminatory assessment of TDU charges and clarifies the DRGO's options for metering methodologies.

IREC requested that TDU fees be calculated on the net of in-flows minus out-flows, based on the assumption that DRG out-flows serve nearby loads and thus provide a system benefit by



avoiding the need for long-distance transmission to serve distant loads.

*Commission response*

Consistent with the discussion above, the commission does not find this suggestion to be consistent with PURA §39.916, and therefore declines to make the recommended modification.

Subsection (b)(3)

TXU Retail and the Joint TDUs suggested that this paragraph be revised, replacing the term "transmission and distribution service provider" with "transmission and distribution utility." TXU Retail recommended an almost identical replacement in subsection (b)(5).

*Commission response*

The commission agrees that "transmission and distribution utility" is better terminology and modifies the subsections accordingly.

The Joint TDUs suggested that, while it may exceed the scope of this rulemaking, the second phase of this project regarding DRG should provide explicitly for the transition of existing DRG installations to metering approved by the commission pursuant to this rulemaking.

*Commission response*

The commission agrees with the Joint TDUs and will address this issue in the second phase of this project.

Subsection (b)(4)

Sierra Club suggested that the commission express a preference that, where practical, metering for DRG should be provided at no additional cost to the DRG owner.

*Commission response*

The commission declines to amend the rule based on Sierra Club's recommendation, because the proposed language in subsection (b)(4) is consistent with PURA §39.914(d) and §39.916(f), and the Sierra Club's recommendation is not.

Subsection (b)(6)

The Joint Renewable Commenters offered additional language to clarify that, beginning January 1, 2009, owners of DG will be allowed to sell surplus generation to "the retail electric provider that serves the DRG owner's load."

The Joint TDUs noted that while today it is unlikely for owners of DRG to sell surplus generation, some who would qualify under the provisions of HB 3693 are doing so, and that the January 1, 2009 date is specifically relevant to the ERCOT settlement implementation. Joint TDUs offered language to modify subsection (b)(6) to indicate that owners of DRG may begin selling surplus generation at any time, but that TDUs and ERCOT are not required to accept meter data pursuant to subsection (b)(1) until January 1, 2009.

*Commission response*

The commission finds that DRGOs may sell surplus electricity at any time, and concludes that the adoption of this rule does not affect their ability to do so. The commission thus declines to adopt the Joint Renewable Commenters' language. The commission recognizes that TDUs and ERCOT are required to begin settlement of surplus generation by January 1, 2009 and adopts the language proposed by the Joint TDUs.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent.

This new rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and in particular PURA §38.002, which authorizes the commission to adopt standards relating to measurement, quality of service, and metering standards, PURA §39.101(b)(3), which provides the commission the authority to adopt and enforce rules relating to customers' right of access to on-site DG, PURA §39.914, which provides for the sale of surplus electricity produced by a public school building's solar electric generation panels, and PURA §39.916, which directs the commission to establish standards for DRG.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 38.002, 39.101, 39.914, and 39.916.

§25.213. *Metering for Distributed Renewable Generation.*

(a) Application. This section applies to transmission and distribution utilities, excluding river authorities, owners of distributed renewable generation, and the entity responsible for settlement.

(b) Metering.

(1) Upon request by a customer that has, or is in the process of installing distributed renewable generation with a capacity of less than 50 kW on the retail electric customer's side of the meter and that desires to measure the generation's out-flow production, a transmission and distribution utility shall provide metering at the point of common coupling using one or two meters that separately measure both the customer's electricity consumption from the distribution network and the out-flow that is delivered from the customer's side of the meter to the distribution network and separately report each metered value to the transmission and distribution utility. The two metered values shall be separately accounted for by the entity responsible for settlement.

(2) Upon request by a retail electric customer that has, or is in the process of installing distributed renewable generation with a capacity equal to or greater than 50 kW up to 2,000 kW on the retail electric customer's side of the meter, a transmission and distribution utility shall provide one or two interval data recorders at the point of common coupling that separately measure both the customer's electricity consumption from the distribution network and the out-flow that is delivered from the retail electric customer's side of the meter to the distribution network and separately report each metered value to the transmission and distribution utility. The two metered values shall be separately accounted for by the entity responsible for settlement.

(3) Upon request by a retail electric customer that has, or is in the process of installing distributed renewable generation with a capacity of less than 50 kW on the retail electric customer's side of the meter and that does not desire to measure the generation's out-flow production, a transmission and distribution utility shall provide metering in accordance with paragraph (1) of this subsection or, at the transmission and distribution utility's option, install a meter that measures the customer's electricity consumption from the distribution network but does not measure the out-flow that is delivered from the retail electric customer's side of the meter to the distribution network. Unless an existing distributed renewable generation owner requests to have the existing meter replaced, the transmission and distribution utility may, at its option and expense, replace an existing distributed renewable generation owner's meter with a meter of a type specified in this rule.

(4) Pursuant to the applicable schedule in its tariff, a transmission and distribution utility shall charge for the customer's electricity consumption from the distribution network as measured by the metering installed pursuant to paragraphs (1), (2) or (3) of this subsection.

(5) A transmission and distribution utility shall not provide metering for purposes of PURA §39.914(d) and PURA §39.916(f), that is inconsistent with paragraph (1), (2) or (3) of this subsection, unless ordered by the commission.

(6) The distributed renewable generation owner shall pay any significant differential cost of the metering.

(7) Transmission and distribution utilities shall file tariffs for metering under this section within 60 days of its effective date.

(8) Owners of distributed renewable generation may begin selling out-flow at any time, but transmission and distribution utilities are not required to comply with paragraph (1), (2) or (3) of this subsection, as they relate to reporting the two metered values, and the entity responsible for settlement is not required to accept the meter data provided pursuant to paragraph (1), (2) or (3) of this subsection until January 1, 2009.

(9) The entity responsible for settlement shall develop processes for settlement of electricity consumption and out-flow that reflects time of generation by January 1, 2009.

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

Filed with the Office of the Secretary of State on April 24, 2008.

TRD-200802163

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: May 14, 2008

Proposal publication date: February 22, 2008

For further information, please call: (512) 936-7223

## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 73. ELECTRICIANS

#### 16 TAC §73.80

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code ("TAC") Chapter 73, §73.80 regarding the electricians program application and contractor fees as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9203), without changes, and will not be republished.

The amendment to §73.80 reduces the application and renewal fees for master electricians and master sign electricians from \$65 to \$50; journeyman electricians and journeyman sign electricians from \$40 to \$35; and electrical contractors from \$125 to \$115. The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The fees currently in place are above the amount required by the Department to cover costs.

The decrease will not adversely affect the administration and enforcement of the electricians program.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposal was published in the *Texas Register* on December 14, 2007. The comment period closed on January 14, 2007. No public comments were received regarding the proposed rule.

The amendments are adopted under Texas Occupations Code, Chapter 1305 and Chapter 51, which authorizes the Department 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 adoption are those set forth in Texas Occupations Code, Chapter 1305 and Chapter 51. No other statutes, articles, or codes are 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 April 24, 2008.

TRD-200802164

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: May 15, 2008

Proposal publication date: December 14, 2007

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

## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 162. SUPERVISION OF MEDICAL SCHOOL STUDENTS

##### 22 TAC §162.1

The Texas Medical Board (Board) adopts an amendment to §162.1, concerning Supervision of Medical Students, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1950) and will not be republished.

The amendment updates the names of the Texas Medical Board and provides limited circumstances for when a physician who is employed by the federal government physician but who is not licensed in Texas may supervise a medical student.

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on March 19, 2008.

The Board received no public written comments and no one appeared to testify at the public hearing held on April 11, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 April 22, 2008.

TRD-200802088

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: May 12, 2008

Proposal publication date: March 7, 2008

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



## CHAPTER 164. PHYSICIAN ADVERTISING

### 22 TAC §164.3

The Texas Medical Board (Board) adopts an amendment to §164.3, concerning Misleading or Deceptive Advertising, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1951) and will not be republished.

The amendment redefines "solicitation" by deleting reference to "door to door solicitation" and referring to Texas Occupations Code §102.001(a).

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on March 31, 2008.

The Board received no public written comments and no one appeared to testify at the public hearing held on April 11, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 April 22, 2008.

TRD-200802089

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: May 12, 2008

Proposal publication date: March 7, 2008

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



## CHAPTER 173. PHYSICIAN PROFILES

### 22 TAC §173.3, §173.7

The Texas Medical Board (Board) adopts amendments to §173.3, concerning Physician-Initiated Updates and §173.7, concerning Corrections and the Dispute Process, without changes to the proposed text as published in the March 7, 2008,

issue of the *Texas Register* (33 TexReg 1952) and will not be republished.

The amendments provide description information for citations to statutes and clarify that dispute process applies to any update of a profile discussed in Chapter 173.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008.

The Board received no public written comments and no one appeared to testify at the public hearing held on April 11, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 April 22, 2008.

TRD-200802090

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: May 12, 2008

Proposal publication date: March 7, 2008

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



## CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

### 22 TAC §196.1

The Texas Medical Board (Board) adopts amendments to §196.1, concerning Relinquishment of License, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1953) and will not be republished.

The amendment requires that a request to relinquish a license to be submitted in writing and deletes the requirement that the full board review a request for relinquishment.

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on March 19, 2008.

The Board received no public written comments and no one appeared to testify at the public hearing held on April 11, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 April 22, 2008.

TRD-200802091

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: May 12, 2008

Proposal publication date: March 7, 2008

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



## PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

### CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts amendments to §§741.1, 741.44, 741.45, 741.61, 741.62, 741.64, 741.81 - 741.85, 741.91, 741.101, 741.112, 741.161 - 741.164, 741.181, and 741.201, concerning the regulation and licensure of speech-language pathologists and audiologists. The amendments to §§741.61, 741.62, 741.64, 741.81, 741.82, 741.84, 741.91, 741.101, 741.112 and 741.162 are adopted with changes to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 645). Sections 741.1, 741.44, 741.45, 741.83, 741.85, 741.161, 741.163, 741.164, 741.181 and 741.201 are adopted without changes, and the sections will not be republished.

#### BACKGROUND AND PURPOSE

The amendments update the rules to reflect the board's current operational procedures in processing and approving licensure applications and to provide clarification of the rules, so that the intent is not ambiguous for license holders and the public. The rules also reflect current national standards relating to the regulation of speech-language pathologists and audiologists. Additionally, a new continuing education requirement in ethics enhances the quality of services provided to the public through increased professional and ethical competence of license holders.

#### SECTION-BY-SECTION SUMMARY

Amendments to §741.1 delete the separate definitions of "dispense" and "fit" and to add a new definition of "fitting and dispensing hearing instruments" intended to clarify and improve the section. The amendments to §741.44(a) clarify that, if the speech-language pathologist does not have the required experience, the person may request review of the person's qualifications. The amendment to §741.44(b)(1)(A) clarifies that the person being supervised must hold a current license.

The amendment to §741.45 removes obsolete language. The amendment to §741.61 clarifies acceptable documentation required from applicants who graduated from a college or university not accredited by the American Speech-Language-Hearing Association. The amendments to §741.62 and §741.64 delete the provision that the requirements must be met within 10 years

of the date of application; clarify the responsibilities of a supervisor; clarify the documentation required; clarify the responsibilities and duties of licensed speech-language pathology assistants; and update the rules to reflect national regulatory standards.

The amendments to §741.81 clarify the educational documentation required from an applicant. The amendments to §741.82 delete the provision that the requirements must be met within 10 years of the date of application; to clarify the documentation required; and to update the rules to reflect national regulatory standards. Amendments to §761.83 provide that an applicant may submit certification by the American Board of Audiology as evidence that the applicant meets clinical experience and examination requirements for licensure. The amendments to §741.84 delete the provision that the requirements must be met within 10 years of the date of application; and to update and clarify the section. The amendment to §761.85 deletes obsolete language.

The amendment to §741.91 clarifies the documentation required from an applicant. The amendment to §741.101 deletes obsolete language. The amendments to §741.112 are for clarity and consistency with other amendments.

The amendment to §741.161 clarifies the appropriate continuing education documentation required at the time of license renewal. Amendment to §741.162 clarifies documentation required from the license holder and the required biennial completion of continuing education in ethics, to be effective April 30, 2009. Amendments to §741.163 and §741.164 correct citations and clarify the rules.

The amendments to §741.181 delete obsolete language relating to provision licenses and licenses issued for a one-year term, and clarify that the penalty fee for insufficient checks is \$25 instead of \$50.

The amendment to §741.201 corrects a typographical error.

#### COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were two individuals and one association including the following: Licensees of the board and representatives of the Texas Speech-Language-Hearing Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

Comment: Concerning §741.61(b)(5), the commenter indicated that reference to ASHA's Clinical Certification Board needs to be updated to reflect current ASHA structure.

Response: The board agreed with the comment and amended the language in §741.61(b)(5) accordingly.

Comment: Concerning §741.62, the commenter indicated that the reference to remove the stipulation that the degree be earned within 10 years of the application date.

Response: The board disagreed with the comment because the proposed amendment was referring to the application date not the date the degree was earned. No change was made as a result of the comment.

Comment: Concerning §741.44, two of the commenters indicated that the reference to clarify that the supervisor is a licensed speech-language pathologist who holds a current

license seemed redundant however; it would be helpful to use exactly the same wording each time a rule is reiterated. The commenter suggested that the wording needed to be changed in §741.62(g) and §741.64(f).

Response: The board agreed with the comment concerning §741.44 and disagreed with the comment concerning §741.62 and §741.64 because §741.44 refers to what a supervisor is. No change was made as a result of the comment.

Comment: Two comments were received concerning the terminology "conferred transcript" is incorrect.

Response: The board agreed with the comment and amended the language to transcript showing the conferred degree. Changes were made to §§741.61(b)(1) and (b)(4), 741.62(c), 741.64(b)(1), 741.81(b)(1) and (b)(4), 741.82(c), (d) and (e), 741.84(c)(1), 741.112(a)(3), (b)(3), (c)(4), (d)(4), and (e)(3).

Comment: Two comments were made concerning the addition to §741.162(c) of the requirement for two clock hours of continuing education in ethics training for license renewal.

Response: The board agreed with the comment and proposed that an informational letter be sent to all the continuing education sponsors and in the licensee's renewal notices as to the change in the ethics training for license renewal. No changes were made as a result of the comments.

Comment: Concerning §741.91, the commenter indicated that the rule needs to reflect the current standards regarding graduate credit hours.

Response: The board agreed with the comment and amended the language in §741.91 accordingly.

Concerning §§741.64(e), 741.101(a) and 741.162(c) the board made editorial changes to improve the accuracy of these sections.

## SUBCHAPTER A. DEFINITIONS

### 22 TAC §741.1

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

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 April 28, 2008.

TRD-200802200

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

### 22 TAC §741.44, §741.45

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

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 April 28, 2008.

TRD-200802201

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

### 22 TAC §§741.61, 741.62, 741.64

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

*§741.61. Requirements for a Speech-Language Pathology License.*

(a) An applicant for the speech-language pathology license shall meet the requirements set out in the Act and this section.

(b) The graduate degree shall be completed at a college or university which has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C) of this subsection.

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the board has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall submit an original signed letter from the American Speech-Language-Hearing Association (ASHA) stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its co-operating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) An applicant shall have completed a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(1) An individual shall be licensed under §741.62 of this title prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.62 of this title shall:

(A) be licensed in that other state, rather than Texas; or

(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology if the other state did not require licensing.

(e) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within:

(1) the past 10 years; and

(2) two years of the completion date of the internship referenced in subsection (d) of this section.

(f) In the event the applicant passed the examination referenced in subsection (e) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the speech-language pathology license. The applicant shall obtain the intern license as required by §741.62 of this title prior to repeating the internship. The applicant may appeal to the board's designee for waiver of the requirement to repeat the internship.

(g) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.63 of this title (relating to Waiver of Clinical and Examination Requirements for Speech-Language Pathologists).

*§741.62. Requirements for an Intern in Speech-Language Pathology License.*

(a) An applicant for the intern in speech-language pathology license shall meet the requirements set out in the Act and §741.61(a) - (c) of this title (relating to Requirements for a Speech-Language Pathology License) for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology. Within 15 working days of receipt of the request, the board's designee shall evaluate the documentation and shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcript showing the conferred degree is required and shall be evaluated under §741.61(b) of this title.

(d) Masters students. An applicant who successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (c) of this section.

(e) Doctoral students. An applicant who has successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (c) of this section.

(f) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive auto-

matic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.61(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in speech-language pathology and possess at least a master's degree with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying that the supervisor has met this requirement. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience the supervisor shall submit a written request outlining the supervisor's qualifications and justifications for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the intern. The intern plan and agreement of supervision form shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern, each supervisor shall be identified and the Intern Plan and Agreement of Supervision form must be signed by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately. The board shall hold the supervisor responsible for the practice of the intern until the supervisor notifies the board, in writing, of the change in supervision.

(4) Should the intern practice without approval from the board office, disciplinary action may be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(h) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) be successfully completed after no more than two attempts;

(4) consist of a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 35 hours per week in direct client clinical work. Part-time equivalent is defined as follows:

- (A) 0 - 14 hours per week--no credit will be given;
- (B) 15 - 21 hours per week for over 72 weeks;
- (C) 22 - 28 hours per week for over 60 weeks; or

(D) 29 - 34 hours per week for over 48 weeks;

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of face-to-face observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the Board's designee.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) and (2) of this section shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor. Evaluation of the intern's progress of performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted. Within 15 working days of receipt of the request, the board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) An intern who is employed full-time as defined by subsection (h)(3) of this section and wishes to practice at an additional site, shall submit the Intern Plan and Agreement of Supervision form for that site.

(k) During each segment of the internship, each supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the board upon request.

(l) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) Each supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under the supervisor's supervision. This must be submitted within 30 days of the date the supervision ended.

(3) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same,

the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(4) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(m) In any professional context the licensee must indicate the licensee's status as a speech-language pathology intern.

(n) If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) a speech-language pathology license under §741.61 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) if the intern has not passed the examination referenced in §741.121 of this title.

(o) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the speech-language pathology license or the temporary certificate of registration in speech-language pathology as follows:

(1) The current supervisor shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the speech-language pathology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

(3) Supervision required while awaiting approval of either the speech-language pathology license or the temporary certificate of registration shall be consistent with supervision requirements established in subsection (h) of this section.

*§741.64. Requirements for an Assistant in Speech-Language Pathology License.*

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section. The applicant for the assistant license must:

(1) possess a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) have acquired the following:

(A) at least 24 semester hours in speech-language pathology and/or audiology;

(B) and at least 18 semester hours of the 24 hours must be in speech-language pathology;

(C) at least three semester hours in language disorders;

(D) at least three semester hours in speech disorders; and

(E) excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than 25 hours of clinical observation in the area of speech-language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. Within 15 working days of receipt, the board's designee shall evaluate the documentation and shall either approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 semester credit hours in communicative sciences and disorders which may include some leveling hours. Within 15 working days of receipt, the board's designee shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(e) An applicant who has not acquired the hours referenced in subsection (a)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act, for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.



(1) The licensed speech-language pathologist who will provide the assistant with the training to acquire these hours shall submit:

- (A) the supervisory responsibility statement form; and
- (B) a clinical deficiency plan that shall include the following:

- (i) name and signature of the assistant;
- (ii) name, qualifications, and signature of the licensed speech-language pathologist who will provide the training;
- (iii) number of hours of observation and/or assisting experience lacking;
- (iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and
- (v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

- (A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;
- (B) a rating scale of the assistant's performance; and
- (C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completion of the training identified in the clinical deficiency plan.

(5) Board staff shall evaluate the documentation required in paragraph (4) of this subsection and inform the licensed assistant and licensed speech-language pathologist who will provide the licensed assistant with the training if acceptable.

(6) A licensed assistant may continue to practice under supervision of the licensed speech-language pathologist who will provide the licensed assistant with the training while the board office evaluates the documentation identified in paragraph (4) of this subsection.

(7) In the event, another licensed speech-language pathologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraph (4) of this subsection has not been received and approved by the board office, approval for the change in supervision shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit a written request outlining the supervisor's qualifications and a justification for the request for an ex-

ception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the assistant. The supervisor responsibility statement shall be submitted upon:

- (A) application for a license;
- (B) license renewal when there is a change in supervisor;
- (C) other changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the assistant, each supervisor shall be identified on the supervisor responsibility statement.

(3) An assistant may renew the license if there is a change in supervision, but may not practice until a new supervisory responsibility statement form is approved.

(4) In the event the supervisor ceases supervision of the assistant, the supervisor shall notify the board, in writing, and shall inform the assistant to stop practicing immediately. The board shall hold the supervisor responsible for the practice of the assistant until written notification has been received in the board office.

(5) Should the assistant practice without approval from the board office, disciplinary action may be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(g) A licensed speech-language pathologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial diagnostic contacts shall be conducted by the supervising speech-language pathologist.

(2) Following the initial diagnostic contact, the supervising speech-language pathologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) Indirect methods of supervision may include audio and/or video tape recording, report review, telephone or electronic communication, or other means of reporting.

(4) The supervising speech-language pathologist shall provide a minimum of two hours per week of supervision, at least one hour of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit a proposed plan of supervision for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or disapprove the plan. The plan shall be for not more than one year's duration and shall include:

- (A) the name of the licensed speech-language pathology assistant;
- (B) the name and signature of the supervising speech-language pathologist;
- (C) the proposed plan of supervision;
- (D) the exact time frame for the proposed plan;
- (E) the length of time the assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or disapprove the plan.

(7) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor. An assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(B) An assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(h) Although the licensed supervising speech-language pathologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed supervising speech-language pathologist need not be present when the assistant is completing the assigned tasks; however, the licensed speech-language pathologist shall document all services provided and the supervision of the assistant.

(2) The licensed supervising speech-language pathologist shall keep job descriptions and performance records. Records shall be current and made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the speech-language pathologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board if the test developer does not specify a graduate degreed examiner and

the supervisor has determined the assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed speech-language pathologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist.

(i) A licensed speech-language pathology assistant may represent special education and speech pathology at Admission, Review and Dismissal (ARD) meetings with the following stipulations.

(1) The speech-language pathology assistant shall have written documentation of approval from the licensed, board approved speech-language pathologist supervisor.

(2) The speech-language pathology assistant shall have three years experience as a speech pathology assistant in the school setting.

(3) The speech-language pathology assistant may attend, with written approval of the supervising speech-language pathologist, a student's annual review ARD meeting if the meeting involves a student for whom the licensed speech-language pathology assistant provides services. If an assistant attends a meeting as provided by this rule, the supervising speech-language pathologist is not required to attend the meeting. A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial individual educational plan or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.

(4) The speech-language pathology assistant shall present Individual Educational Plan (IEP) goals and objectives that have been developed by the supervising speech-language pathologist and reviewed with the parent by the speech-language pathologist.

(5) The speech-language pathology assistant shall discontinue participation in the ARD meeting, and contact the supervising speech-language pathologist, when questions or changes arise regarding the IEP Document.

(j) The licensed, board approved supervisor of the assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by an SLP assistant and that the SLP assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objective and review them with the SLP assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the assistant.

(k) The licensed speech-language pathology assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathologist being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office;

(12) perform invasive procedures;

(13) screen or diagnose clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to clients, family, or staff;

(16) provide client or family counseling; or

(17) write or sign any formal document relating to the provision of speech-language pathology services (e.g., treatment plans, diagnostic reports, reimbursement forms).

(l) In any professional context the licensee must indicate the licensee status as a speech-language pathology assistant.

(m) The board may audit a random sampling of licensed speech-language pathology assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify an assistant and supervisor by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed speech-language pathology assistant and the licensed speech-language pathologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) The licensed speech-language pathology assistant and the supervising speech-language pathologist shall comply with the board's request for documentation and information concerning compliance with the audit.

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 April 28, 2008.  
TRD-200802202

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆  
**SUBCHAPTER F. REQUIREMENTS FOR  
LICENSURE OF AUDIOLOGISTS**

**22 TAC §§741.81 - 741.85**

**STATUTORY AUTHORITY**

The adopted amendments are authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

*§741.81. Requirements for an Audiology License.*

(a) An applicant for the audiology license shall meet the requirements set out in the Act and this section.

(b) The graduate degree shall be completed at a college or university that has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of audiology, including hearing disorders, hearing evaluations, habilitative/rehabilitative procedures, and preventive methods, including the study of auditory disorders and habilitative/rehabilitative procedures across the life span; and

(C) six semester credit hours shall be earned in the area of normal development of speech and language speech disorders.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraph (1)(B) and (C) of this subsection.

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in speech-language pathology and is pursuing a license in audiology may apply if the board has an original transcript showing the conferred degree showing completion of a master's degree with a major in speech-language pathology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical experience requirements for a license as an audiologist.

(5) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the Amer-

ican Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

(c) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its co-operating programs:

(1) 275 clock hours if the master's or higher degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's or higher degree was earned between November 10, 1993 and December 31, 2006; or

(3) 1400 clock hours if the master's or higher degree was earned on or after January 1, 2007.

(d) An applicant shall obtain a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in audiology as set out in §741.82 of this title (relating to Requirements for an Intern in Audiology License).

(1) An individual shall be licensed under §741.82 of this title prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.82 of this title shall:

(A) be licensed in that other state, rather than Texas; or

(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in audiology if the other state did not require licensing.

(e) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within:

(1) the past 10 years; and

(2) two years of the completion date of the internship referenced in subsection (d) of this section.

(f) In the event the applicant passed the examination referenced in subsection (e) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the audiology license. The applicant shall obtain the intern license as required by §741.82 of this title prior to repeating the internship. The applicant may appeal to the board's designee for waiver of the requirement to repeat the internship.

(g) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists).

*§741.82. Requirements for an Intern in Audiology License.*

(a) An applicant for the intern in audiology license shall meet the requirements set out in the Act and §741.81(a) - (c) of this title (relating to Requirements for an Audiology License).

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of audiology to be

evaluated by the board's designee. The applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcript showing the conferred degree is required and shall be evaluated under §741.81(b) of this title.

(d) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (c) of this section.

(e) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctor of audiology (Au.D.) program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (c) of this section.

(f) An applicant whose graduate degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.81(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of audiology with six hours in speech-language pathology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in audiology and possess a master's degree or higher with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The Board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the Board.

(1) Approval from the board office shall be required prior to practice by the intern. The intern plan and agreement of supervision shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the intern, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately.

(4) Should the intern practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) be successfully completed in no more than two attempts;

(4) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment is defined as a minimum of 35 hours per week in direct client clinical work. Part-time equivalent is defined as follows:

(A) 0 - 14 hours per week--no credit will be given;

(B) 15 - 21 hours per week for over 72 weeks;

(C) 22 - 28 hours per week for over 60 weeks; or

(D) 29 - 34 hours per week for over 48 weeks;

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of face-to-face observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the board's designee.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) - (2) of this section shall request an extension, in writing, explaining the reason for the request. Evaluation of the intern's progress or performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for completed segments must be submitted. The board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the audiology

license is granted. A copy of this documentation must be submitted to the board upon request.

(k) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the previous supervisor and the intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) A primary supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(3) A secondary supervisor who ceases supervising an intern shall submit written documentation of the intern's performance under their supervision. This must be submitted within 30 days of the date the supervision ended.

(4) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(5) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(6) In any professional context the licensee must indicate the licensee's status as an audiology intern.

(l) If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) an audiology license under §741.81 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.85 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) if the intern has not passed the examination referenced in §741.121 of this title.

(m) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the audiology license or the temporary certificate of registration in audiology as follows:

(1) The current supervisor(s) shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the audiology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

§741.84. *Requirements for an Assistant in Audiology License.*

(a) An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section.

(b) An assistant is an individual who provides audiology support services to clinical programs under supervision of a licensed audiologist and meets the following requirements:

(1) possesses a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in audiology core curriculum and excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) earned no fewer than 25 hours of clinical observation in the area of audiology and 25 hours of clinical assisting experience in the area of audiology obtained within an educational institution or in one of its cooperating programs.

(c) The baccalaureate degree shall be completed at a college or university that has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (b) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Revocation, Suspension, Emergency Suspension, or Denial) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(d) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 graduate hours in communicative sciences or disorders which may include some leveling hours.

(e) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(f) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemp-

tions in the Act for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed audiologist who will provide the assistant with the training to acquire these hours shall submit:

(A) the supervisory responsibility statement form; and

(B) a clinical deficiency plan that shall include the following:

(i) name and signature of the assistant;

(ii) name, qualifications, and signature of the licensed audiologist who will provide the licensed assistant with the training;

(iii) number of hours of observation and/or assisting experience lacking;

(iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and

(v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the licensed audiologist who is providing the licensed assistant with the training identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the assistant's performance; and

(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completions of the training identified in the clinical deficiency plan.

(5) In addition to paragraph (4) of this subsection, the assistant shall submit an original signed statement listing the duties that an assistant may and may not perform and acknowledge understanding that the supervisory responsibility statement form shall be received and approved by board staff in order for the assistant to practice.

(6) Board staff shall evaluate the documentation in paragraphs (4) and (5) of this subsection and inform the assistant and trainer if acceptable.

(7) A licensed assistant may continue to practice under the supervision of the licensed audiologist who is providing the licensed assistant with the training while the board office evaluates the documentation identified in paragraphs (4) and (5) of this subsection.

(8) In the event, another licensed audiologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documen-

tation required by paragraphs (4) and (5) of this subsection has not been received and approved by the board office, approval for the change shall not be granted.

(g) A supervisory responsibility statement shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the assistant. The supervisory responsibility statement shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the assistant, the primary supervisor shall be identified and separate supervisor responsibility statements submitted by each supervisor.

(3) An assistant may renew the license but may not practice until a new supervisor responsibility statement is approved.

(4) In the event the supervisor ceases supervision of the assistant, the assistant shall stop practicing immediately.

(5) Should the assistant practice without approval from the board office, disciplinary action shall be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) A licensed audiologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial diagnostic contacts shall be conducted by the supervising licensed audiologist.

(2) Following the initial diagnostic contact, the supervising audiologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) The supervising audiologist(s) shall provide the minimum of two hours per week, at least one hour of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(4) Indirect methods of supervision may include audio and/or video tape recording, telephone communication, numerical data, or other means of reporting.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising audiologist shall submit a proposed plan of supervision for review by the board's designee. The plan shall be for not more than one year's duration and shall include:

- (A) the name of the assistant;
- (B) the name and signature of the supervising audiologist;
- (C) the proposed plan of supervision;

(D) the exact time frame for the proposed plan;

(E) the length of time the assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising audiologist shall annually resubmit a request to be evaluated by the board's designee.

(7) Supervisory records shall be maintained by the licensed audiologist for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which include data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor.

(B) An assistant may not conduct an evaluation which includes diagnostic testing, test and observation interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(i) Although the licensed supervising audiologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist need not be present when the assistant is completing the assigned tasks; however, the licensed audiologist shall document all services provided and the supervision of the assistant.

(2) The licensed audiologist shall keep job descriptions and performance records. Records shall be current and be made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed audiologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed audiologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the audiologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) conduct aural habilitation or rehabilitation;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed audiologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed audiologist.

(5) The assistant shall not:

(A) conduct evaluations even under supervision since this is a diagnostic and decision making activity;

(B) interpret results of routine tests;

(C) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(D) represent audiology at staff meetings or on an admission, review and dismissal (ARD);

(E) attend staffing meeting or ARD without the supervisor being present;

(F) design a treatment program;

(G) determine case selection;

(H) present written or oral reports of client information;

(I) refer a client to other professionals or other agencies;

(J) use any title which connotes the competency of a licensed audiologist; or

(K) practice as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.

(j) In any professional context the licensee must indicate the licensee's status as an audiology assistant.

(k) An assistant may not engage in the fitting, dispensing or sale of a hearing instrument; however, an assistant who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant license when performing those activities.

(l) The board may audit a random sampling of licensed assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify an assistant by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed audiologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

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 April 28, 2008.

TRD-200802203

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

## SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

### 22 TAC §741.91

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

*§741.91. Requirements for Dual Licenses in Speech-Language Pathology and Audiology.*

(a) An applicant for dual licenses in speech-language pathology and in audiology as referenced in the Act shall meet the requirements set out in:

(1) Section 741.63 of this title (relating to a Waiver of Clinical and Examination Requirements for Speech-Language Pathologists) and §741.83 of this title (relating to a Waiver of Clinical and Examination Requirements for Audiologists); or

(2) Section 741.61 of this title (relating to Requirements for a Speech-Language Pathology License) and §741.81 of this title (relating to Requirements for an Audiology License) with the following exceptions.

(A) Instead of the number of semester credit hours of course work referenced in §741.61(b) of this title and §741.81(b) of this title, the applicant shall have completed:

(i) at least 42 semester credit hours in professional course work acceptable toward a graduate degree with at least 21 semester credit hours awarded graduate credit in speech-language pathology and at least 21 semester credit hours awarded graduate credit in audiology;

(ii) at least 30 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology as follows:

(I) at least six graduate semester credit hours in speech disorders; and

(II) at least six graduate semester credit hours in language disorders;

(iii) at least 30 semester credit hours acceptable toward a graduate degree in the area of audiology as follows:

(I) at least six graduate semester credit hours in hearing disorders and hearing evaluations; and

(II) at least six graduate semester credit hours in habilitative/rehabilitative procedures with individuals who have hearing impairment.

(B) Instead of the number of hours of supervised clinical observation and experience referenced in §741.61(c) of this title and §741.81(c) of this title, the applicant shall have completed at least:

(i) 25 hours of supervised observation in evaluation and treatment of children and adults with disorders of speech, language, or hearing prior to beginning 600 graduate credit hours of direct clinical experience; and



(ii) 400 minimum graduate credit hours of clinical experience with at least 325 hours in speech-language pathology under direction of a graduate degreed licensed speech-language pathologist and at least 52 weeks at 35 hours per week hours in audiology under direction of a graduate degreed licensed audiologist.

(b) Academic credit for clinical experience cannot be used to satisfy the minimum requirements of at least 21 graduate semester credit hours in speech-language pathology and at least 21 graduate semester credit hours in audiology.

(c) Transcripts shall be evaluated as set out in either §741.61(b) of this title or §741.81(b) of this title.

(d) A speech-language pathology license and an audiology license shall be issued individually.

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 April 28, 2008.

TRD-200802204

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

### 22 TAC §741.101

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

*§741.101. Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments.*

(a) The audiology license constitutes registration to fit and dispense hearing instruments.

(b) The audiology intern license and the temporary audiology certificate constitute registration to fit and dispense hearing instruments under supervision of the licensed audiologist approved by the board office to supervise the internship.

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 April 28, 2008.

TRD-200802205

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER I. APPLICATION PROCEDURES

### 22 TAC §741.112

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

*§741.112. Required Application Materials.*

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) if not previously submitted when applying for intern, an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b) - (c) of this title or §741.81(b) - (c) of this title;

(5) an original board report of completed internship form completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor shall also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor shall submit an original letter from the American Speech-Language-Hearing Association stating the certificate of clinical competence was held when the applicant completed the internship in addition to proof of a master's degree in communicative sciences and disorders; and

(6) an original or certified statement from the Educational Testing Service showing the applicant passed the examination described in §741.121 of this title (relating to Examination Adminis-

tration) within the time period established in §741.61(e) or §741.81(e) of this title.

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) if the graduate degree has not been officially conferred, an original or certified copy of transcript(s) and verification from the university attended verifying the applicant successfully completed all requirements for the graduate degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b) - (c) of this title or §741.81(b) - (c) of this title; and

(6) a current, original board intern plan and agreement of supervision form completed by the supervisor and signed by both the applicant and the supervisor.

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Waiver of Clinical and Examination Requirements for Speech-Language Pathologists) or §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of a signed letter from the American Speech-Language-Hearing Association (ASHA) or the American Board of Audiology (ABA) which verifies the applicant currently holds the certificate of clinical competence or board certification in the area in which the applicant has applied for license; and

(4) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency.

(d) An applicant applying for an assistant in speech-language pathology license under §741.64 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or an assistant

in audiology license under §741.84 of this title (relating to Requirements for an Assistant in Audiology License) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) a current, original board supervisory responsibility statement form completed by the licensed supervisor who agrees to accept responsibility for the services provided by the assistant and signed by both the applicant and the supervisor;

(4) an original or certified copy of the transcript(s) showing the conferred degree of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech-language pathology and/or audiology;

(5) if not previously submitted, an original board clinical observation and experience form completed by the director or designee of the college or university training program verifying the applicant completed the requirements set out in §741.64(a)(3) of this title or §741.84(b)(3) of this title; and

(6) for an applicant who did not obtain the hours referenced in paragraph (5) of this subsection, a clinical deficiency plan to obtain the hours.

(e) An applicant applying for a speech-language pathology temporary certificate of registration under §741.65 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.85 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the temporary certificate of registration fee;

(3) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b) - (c) of this title or §741.81(b) - (c) of this title;

(5) an original board report of completed internship form completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor shall also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor shall submit an original letter from the American Speech-Language-Hearing Association stating the certificate of clinical competence was held when the applicant completed the internship

in addition to proof of a master's degree in communicative sciences and disorders; and

(6) an applicant who completed the internship in another state and graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association, shall submit an original, signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work, clinical practicum and the clinical fellowship year.

(f) An applicant for dual licenses in speech-language pathology and audiology under §741.91 of this title (relating to Requirements for Dual Licenses in Speech-Language Pathology and Audiology) shall submit separate documentation and fees as follows:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days requesting both licenses;

(2) two separate application and initial license fees; and

(3) documentation listed in subsection (a)(3) - (6) of this section or subsection (c)(3) - (4) of this section.

(g) An applicant who currently holds one license and wishes to obtain dual licenses shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days requesting the other license;

(2) the application and initial license fee; and

(3) documentation listed in subsection (a)(3) - (6) of this section or subsection (c)(3) - (4) of this section.

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 April 28, 2008.

TRD-200802206

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

### 22 TAC §§741.161 - 741.164

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

§741.162. *Requirements for Continuing Professional Education.*

(a) Continuing professional education in speech-language pathology and audiology as required by the Act consists of a series of

planned individual learning experiences beyond the basic educational program which has led to a degree or qualifies one for licensure.

(b) A continuing education unit (CEU) is the basic unit of measurement used to credit individuals with continuing education activities for licensure. One CEU is defined as 10 contact hours of participation in an approved continuing education experience.

(c) Twenty clock hours (two CEUs) shall be required to renew a license issued for a two-year term. The holder of dual licenses, meaning both a speech-language pathology license and an audiology license, shall be required to earn 30 clock hours (three CEUs) to renew a license issued for a two-year term. Effective April 30, 2009, a license holder must complete a minimum of 2.0 clock hours (0.2 CEUs) in ethics as part of the continuing education requirement.

(d) When renewing an initial license, the licensee shall submit 10 continuing education hours if the initial license was issued for less than 12 months and 20 continuing education hours if the initial license was issued for more than 12 months. Continuing education hours earned before the original effective date of a license are not acceptable.

(e) Continuing professional education shall be earned in one of the following areas:

(1) basic communication processes;

(2) speech-language pathology;

(3) audiology; or

(4) an area of study related to the areas listed in paragraphs (1) - (3) of this subsection.

(f) Any continuing education activity shall be provided by an approved sponsor with the exception of activities referenced in subsections (g) - (i) of this section. A list of approved sponsors designated by the board shall be made available to all licensees and updated as necessary.

(g) University or college course work completed with a grade of at least a "C" or for credit from an accredited college or university in the areas listed in subsection (e)(1) - (3) of this section shall be approved for 10 continuing education clock hours per semester hour.

(h) University or college course work in a related area or events approved by the American Medical Association (Category I) in a related area as referenced in subsection (e)(4) of this section may be approved if the activity furthers the licensee's knowledge of speech-language pathology or audiology or enhances the licensee's service delivery. A licensee shall complete the board's approved form for prior approval of such events. Partial credit may be awarded.

(i) Earned continuing education hours exceeding the minimum requirement in a previous renewal period shall first be applied to the continuing education requirement for the current renewal period.

(1) A maximum of 10 additional clock hours may be accrued during a license period to be applied to the next consecutive renewal period.

(2) A maximum of 15 additional clock hours may be accrued by dual speech-language pathology and audiology licensees during a license period to be applied to the next consecutive renewal period.

(j) The licensee shall be responsible for maintaining a record of his or her continuing education experiences for a period of at least three years.

(k) Proof of completion of a valid continuing education experience shall include the name of the licensee, the sponsor of the event,

the title and date of the event, and the number of continuing education hours earned. Acceptable verification shall be:

(1) a letter or form bearing a valid signature or verification as designated by the approved sponsor;

(2) in the event verification referenced in paragraph (1) of this subsection cannot be obtained, the board may accept verification from the presenter of an approved event if the presenter can also provide proof that the event was acceptable to an approved sponsor;

(3) an original or certified copy of the transcript if earned under subsections (g) - (h) of this section;

(4) a letter or form from the American Medical Association if earned under subsection (h) of this section stating the event was approved for Category I; and

(5) if the continuing education event was earned under subsection (h) of this section, a letter or form from the board office granting prior board approval of the event in addition to documentation listed in paragraphs (3) and (4) of this subsection. If this approval was not obtained, the licensee shall not include the event on the documentation. The licensee shall comply with the requirements set out in subsection (h) of this section and, if approval is granted, add the event to the documentation.

(l) The documentation, certificates, diplomas, or other documentation verifying earning of continuing education hours shall not be forwarded to the board at the time of renewal unless the board selected the licensee for audit.

(m) The audit process shall be as follows.

(1) The board shall select for audit a random sample of licensees for each renewal month. The renewal form shall indicate whether the licensee has been selected for audit.

(2) A licensee selected for audit shall submit documentation defined in subsections (l) and (m) of this section at the time the renewal form and fee are submitted to the board.

(3) Failure to timely furnish this information or providing false information during the audit or renewal process are grounds for disciplinary action against the licensee.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the board office.

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 April 28, 2008.

TRD-200802207

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

### 22 TAC §741.181

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

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 April 28, 2008.

TRD-200802208

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER N. COMPLAINTS, VIOLATIONS, PENALTIES, AND DISCIPLINARY ACTIONS

### 22 TAC §741.201

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

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 April 28, 2008.

TRD-200802209

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: May 18, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 458-7111 x6972



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

## CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts amendments to §§801.2, 801.17, 801.18, 801.41 - 801.54, 801.72, 801.92, 801.112 - 801.114, 801.142, 801.143, 801.174, 801.201, 801.232, 801.235, 801.236, 801.261 - 801.264, 801.266, 801.291, 801.294, 801.296, 801.297, 801.301, 801.332, and 801.351 and new §801.115 and §801.303, concerning the licensure and regulation of marriage and family therapists. The amendments to §§801.2, 801.42, 801.44, 801.46 - 801.48, 801.142, 801.296, and 801.297 are adopted with changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 843). Sections 801.17, 801.18, 801.41, 801.43, 801.45, 801.49 - 801.54, 801.72, 801.92, 801.112 - 801.114, 801.143, 801.174, 801.201, 801.232, 801.235, 801.236, 801.261 - 801.264, 801.266, 801.291, 801.294, 801.301, 801.332, and 801.351 and new 801.115 and 801.303 are adopted without changes and, therefore, the sections will not be republished.

### BACKGROUND AND PURPOSE

The adopted amendments and new sections are necessary to implement Occupations Code, Chapter 502. The adopted amendments and new rules correct minor errors, improve the rules, and ensure that the rules reflect current legal, policy, and operational considerations.

### SECTION BY SECTION SUMMARY

The amendments to §801.2 improve the current definition of accredited institutions to include accredited institutions and programs defined as an institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council of Higher Education Accreditation; add a definition of endorsement; expand the definition of a therapist to include a licensed marriage and family therapist associate; and, renumber the section accordingly.

The amendment to §801.17 identifies the licenses for which the board shall prepare and provide a license certificate.

The amendments to §801.18 base the late renewal fees for up to and after 90 days on a percentage of the current license renewal fee, instead of on a percentage of the license examination fee.

The amendment to §801.41 replaces the general word "therapist" with the more specific term "licensee."

The amendments to §801.42 improve language and add parenting coordination, parent education and parent training and life coaching to professional therapeutic services which may be provided by marriage and family therapists and associates.

The amendments to §801.43 clarify language; require licensees to make reasonable efforts to prevent others from making misrepresentations regarding a licensee's professional qualifications and services; and require a licensee to indicate his or her status as a licensed marriage and family therapist or licensed marriage and family therapist associate when providing professional services.

The amendments to §801.44 improve language; require licensees to provide professional services only in the context of a professional relationship; require licensees to obtain appropriate consent for treatment before providing services and make

reasonable efforts to determine whether the conservatorship, guardianship or parental rights of the client has been modified by a court; require licensees to make known to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the client's confidentiality; specify that a reasonable effort should be made to avoid dual relationships and that licensees have the responsibility to ensure the welfare of the client if a dual relationship arises; require that licensees shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client; require licensees to base all services on an assessment, evaluation or diagnosis of the client; require licensees to evaluate a client's progress on a continuing basis to guide service delivery and to make use of supervision and consultation as indicated by the client's needs; and require licensees to not promote or encourage the illegal use of alcohol or drugs by clients.

The amendments to §801.45 improve language and replace the current list of examples of sexual contact with a reference to and inclusion of behaviors described in the Texas Penal Code, §21.01.

The amendments to §801.46 specifies that a licensee shall not administer and interpret any test without the appropriate training and experience to administer and interpret the test and replaces the general term "therapist" with the more specific term "licensee."

The amendments to §§801.50, 801.52, 801.54, 801.201, 801.232, 801.236, 801.261, 801.262, and 801.291 replace the general term "therapist" with the more specific term "licensee."

The amendments to §801.47 improve language and specify prohibitions against licensees' use of illegal drugs and alcohol.

The amendments to §801.48 improve language; specifies licensees' responsibilities concerning record keeping, maintaining confidentiality and the appropriate release of client records to authorized persons and reporting of client information required by Texas statutes; clarify what client records must include; clarify that client records are to be maintained for a minimum of 5 years for an adult client and for 5 years beyond the age of 18 for a minor client; and to specify that a licensee in independent practice must establish a plan for custody and control of the licensee's client's mental health records in the event of death, incapacity, or termination of services of the licensee; and require the reporting of sexual exploitation of a client by another licensee.

The amendments to §801.49 improve language and requires licensees to report changes in home or business addresses or telephone numbers and the granting of an academic degree relevant to the practice of marriage and family therapy to the board within 30 days of the change.

The amendments to §801.51 allow licensees to provide clients with mandatory information about where to file complaints by placing the information on a client registration form.

The amendments to §801.53 improve language; specify that licensees may not use information in advertising and announcements that is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable, and provide a list of types of such advertising; and require provisional licensees to indicate that status on all advertisements.

The amendments to §801.72 improve language and specify that an application that is not completed one year past the date an application is opened is voided.

The amendments to §801.92 improve language and add a criminal conviction per §801.332 as a basis for denial of a license.

The amendments to §801.112 improve language; provide specifics regarding degrees that meet the academic requirements for licensure, subject to board review of the applicant's practicum if the degree in marriage and family therapy is not from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) and course equivalency review if a degree is in a related field; and require that degrees and coursework received at foreign universities is acceptable only if the degree conferred and coursework has been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program.

The amendments to §801.113 improve language and provide examples of degrees in a related mental health field.

The amendments to §801.114 clarify the length of a supervised clinical practicum.

New §801.115 provides for substitution of licensed experience as a marriage and family therapist in another jurisdiction for having met the academic qualifications for licensure, including the practicum within certain parameters.

The amendments to §801.142 improve language; provide that up to 500 hours of supervised clinical experience accrued in a practicum in a doctoral program accredited by the Commission for Accreditation of Marriage and Family Therapy Education may be applied toward the 3,000 hour supervised clinical experience requirement for licensure as a Marriage and Family Therapist; provide that up to 50 hours of the 200 hours of supervision may occur via electronic media; provide that supervision and supervised clinical experience completed in another jurisdiction is accepted by endorsement only; provide for a substitution of licensed experience in another jurisdiction for supervised clinical experience; and renumber the section accordingly.

The amendments to §801.143 improve language and reorder the section.

The amendment to §801.174 specifies that the board shall accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

Amendments to §801.235 define the amount of the fee for renewing a license late.

The amendments to §801.263 improve language and specify that a licensed marriage and family therapist associate is required to complete 15 hours of continuing education, including 6 hours of ethics per renewal period.

The amendments to §801.264 replace the general term "therapist" with the more specific term "licensee" and correct the name of the Texas Association for Marriage and Family Therapy.

The amendments to §801.266 improve language; remove continuing education for participation in supervision as a licensed marriage and family therapist associate; and renumber the section accordingly.

The amendments to §801.294 improve language.

The amendments to §801.296 improve language to reflect current legal, policy and operational procedures regarding complaint procedures and establish time limits for filing complaints.

The amendments to §801.297 specify that the board may impose monitoring of a licensee who may pose a potential threat to public health or safety as a condition of initial licensure and impose conditions that are not considered to be a formal disciplinary action.

The amendment to §801.301 improves language.

New §801.303 specifies that the board may resolve pending complaints by issuance of formal advisory letters that are not considered to be disciplinary actions and which do not entitle a licensee to a formal hearing; however the licensee may submit a written response to be included in the licensing record.

The amendments to §801.332 replace the general term "therapist" with the more specific term "licensee" and add other clarifying changes.

The amendments to §801.351 allow the complainant and others present at the request of the complainant, members of the board, the licensee or applicant, the licensee or applicant's attorney, and board staff to remain for all portions of an informal conference, except during consultation between the board members, staff and the board's legal counsel and at the discretion of the board and allow witnesses other than the complainant to be present only during their testimony.

#### COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were six individuals, three associations and/or groups, and two board members including the following: Licensees of the board, representatives of the Texas Association for Marriage and Family Therapy, the Texas Medical Association, and members of the board. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

Comment: Concerning §801.42(19), the commenter indicated agreement with the inclusion of parenting coordination in the scope of practice of a marriage and family therapist but requested that the board consider using the terms "parenting coordinator" and "parenting coordinating" in rule to match the language of the statute, citing the difference in the terms. The commenter also indicated that the appropriate reference to statute is Subchapter K of Chapter 153 of the Texas Family Code instead of the proposed Subchapter J.

Response: The board agreed with the comment and amended the language in §801.42(19) accordingly.

Comment: Concerning §801.43(b), the commenter indicated that the language the states "a licensee shall not make any exaggerated claims" may be a little broad.

Response: The board disagreed with the comment and clarified that the requirement was previously in the rule at former §801.43(c). No change was made as a result of the comment.

Comment: Concerning §801.43(e), which requires new licensees to "make reasonable efforts to prevent others from misrepresenting the marriage and family therapists services,"

one commenter indicated that the term "reasonable" is not defined and it would be left up to the board to define what efforts are "reasonable." The commenter posed questions related to how the board would determine whether "reasonable efforts" were made. Another commenter indicated that the topic is appropriate for inclusion in discussions of ethical behavior, but that it was not needed in "standing statute." The commenter also indicated that other mental health professionals do not have such a "legislated mandate."

Response: The board disagreed with the comments. The board responded that reasonable efforts could be determined by the board and noted that other mental health boards do have such a requirement. No change was made as a result of the comments.

Comment: Concerning §801.44(i), the commenter indicated that the proposed language, "dual relationships are to be avoided," does not address the reality of small town or rural life, nor does it address cultural differences. The commenter supported maintenance of appropriate boundaries and expressed that previous language provided for that. The commenter indicated that the proposed language opened an ethical "slippery slope."

Response: The board agreed in part with the comment. The reality is that dual relationships do exist in small communities; they can also occur in large communities. Proposed language was amended to require licensees to make a reasonable effort to avoid dual relationships.

Comment: Concerning §801.44(l), the commenter indicated that the Texas State Board of Examiners of Professional Counselors adopted rules requiring a Licensed Professional Counselor to maintain records a minimum of five years for all clients and encouraged the board to adopt similar language.

Response: The board noted that rule was not open to substantive change because it was not proposed for change. The board will consider the comment in a future rule change process. No change was made as a result of the comment.

Comment: Concerning §801.44(p), two commenters indicated disagreement with restricting marriage and family therapists from borrowing from or lending money or other items of value to clients because of cultural considerations, because to the therapeutic value for a client, because the rule does not address the extent of the value of potential items that might be borrowed or loaned, such as bus fare, band aids, or tissue paper, and because the rule prohibits the use of sound clinical judgment in regard to circumstances when it would be clinically appropriate.

Response: The board agreed with the comments and deleted the proposed §810.44(p) and relettered subsections "(q) - (t)" as "(p) - (s)."

Comment: Concerning proposed §801.44(r) and (s), relettered as (p) and (q), one commenter indicated disagreement with the inclusion of the rules because it is not necessarily consistent with all theoretical orientations and may be misconstrued by changing boards and committees. The commenter questioned how terms would be defined and how compliance would be determined.

Concerning §801.44(r), the Texas Medical Association urged the removal of the word diagnosis from the rules. The commenter argues that under the Occupations Code only physicians can diagnose medical conditions and that the practice of medicine is defined in part at Occupations Code, §151.002(a)(13), as "the diagnosis, treatment or offer to treat a mental or physical disease or disorder...by any system or method..." Diagnosis is beyond the scope of the practice of marriage and family therapy, which is

defined as, "...applying family systems theories and techniques" including "the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction in the context of marriage or family systems."

Response: The board disagreed with the comments. One meaning of diagnosis, from Webster's New Collegiate Dictionary, is "Investigation or analysis of the cause or nature of a condition, situation, or problem." This is essentially the same meaning as the word evaluation as used in the definition of marriage and family therapy. The meaning is clear and enables an accurate determination of compliance with the act. Nothing in the Occupations Code exclusively reserves the term diagnosis to the practice of medicine.

The inclusion of the term "diagnosis" in §801.44(r) does not expand the scope of practice of marriage and family therapy into the practice of medicine, but accurately reflects the scope of practice of marriage and family therapy. No change was made as a result of the comments.

Comment: Concerning §801.47(3), one commenter indicated that the reason and purpose of the rule is not understood, that it seems to imply that licensees have encouraged the behavior, and that it comes close to crossing the line of therapeutic process into legal context.

Response: The board agreed in part with the comments and deleted proposed §810.47(3).

Comment: Concerning §801.48(e), two commenters indicated disagreement with the requirement to maintain client records for five years beyond the age of 18 for a minor. Reasons cited for the disagreement with the rules included the standards for a licensed professional counselor does not carry the provision for minors, that records storage can be up to 23 years of age depending on the age of the client and that record storage is problematic in terms of space, and the effect of time on paper documents.

Response: The board disagreed with the comments because it is important for minors receiving treatment to have access to their client records for at least five years after reaching the age of eighteen. No change was made as a result of the comments.

Comment: Concerning §801.48(h), one commenter indicated agreement with the standards regarding sexual misconduct but was uncertain of the meaning of the phrase, "therapeutic deception" and believed that further clarification is warranted. Two commenters stated that the timeframe in the proposed rule for reporting sexual misconduct is different than the requirement for Licensed Professional Counselors and encouraged the board to choose a reasonable timeframe considering the requirements of a licensee to comply with the rule.

Response: The board disagreed with the comment that further clarification is warranted regarding the meaning of the phrase, "therapeutic deception" because "therapeutic deception" is defined in existing rule in §801.45(a)(4). The board agreed with the comments that the board choose a reasonable timeframe for reporting sexual misconduct by another licensee or mental health service provider. The board adopted a change to §801.48(h) by setting a timeframe of thirty days, consistent with the provisions of the Texas Civil Practices and Remedies Code, Chapter 81.

Comment: Concerning §801.49(c), that requires licensees to report changes in home or business, address or phone number, employment setting, or other relevant changes to the board in writing within 30 days of the change, one commenter commented that the board should not require the reporting of home

addresses and phone numbers and cited safety reasons for the need for licensees to keep their home addresses and phone numbers confidential, not available on a public web site, and not on file with the board and thus subject to disclosure under the public information act. The commenter also expressed concern that her home address and phone number is on the board public roster of licensees on the website. The commenter also indicated that the language in the rule would require a licensee who provides services (consultant, speaker, group facilitator, etc.) in multiple settings to report each setting or location where work was performed to the board within 30 days. The commenter suggested that the rule be rephrased to state that changes in a licensee's "primary marriage and family therapist employment or practice setting" must be reported to the board within 30 days.

Response: The board disagreed with the comment. The Department of State Health Services (department), which provides administrative support for the board, has a standard practice of collecting the home addresses and phone numbers and business addresses and phone numbers upon initial application for licensure and requiring the update of such information as it changes. This practice is consistent with most licensing authorities. The board does publish a roster of its licensees on the web site. The roster does display either the home or business address and phone number. A licensee may contact the board to choose the option. There is a business need to maintain both sets of information for each licensee for the purposes of communication and possible investigation of complaints. A licensee's home addresses and phone numbers and business addresses and phone numbers are subject to disclosure under public information law. No change was made as a result of the comment.

Comment: Concerning §801.53(a) and (b), one commenter indicated that the requirement that advertising and announcements in subsection (a) may not include information that is not readily verifiable is unclear in terms of what readily verifiable means and for whom information must be readily verifiable. The commenter indicated that the language clouds language prohibiting misrepresentation. The commenter indicated that the language in subsection (b) is long and questioned whether the board was dealing with a lot of cases involving misrepresentation.

Response: The board disagreed with the comments because information contained in advertising and announcements should be readily verifiable. In the event of a complaint, the board would evaluate whether information is readily verifiable. No change was made as a result of the comment.

Comment: Concerning §801.114(7), one commenter indicated that language should be added to require a minimum of 50% of case contact in the practicum/internship(s) be with couples and families and to set a minimum of 250 total client contact hours during the practicum/internship(s).

Response: The board noted that rule was not open to substantive change because it was not proposed for change. The board will consider the comment in a future rule change process. No change was made as a result of the comment.

Comment: Concerning §801.115(2) and (3), one commenter noted that paragraph (2) applies to marriage and family therapists licensed in another state for less than five years while paragraph (3) applies to marriage and family therapists licensed less than five years. And asked why the two sections have differing requirements of marriage and family therapists.

Response: The board noted that §801.115(2) applies to applicants licensed as Licensed Marriage and Family Therapists in

another United States jurisdiction and §801.115(3) applies to applicants licensed as Licensed Marriage and Family Therapists Associate in another United States jurisdiction. No change was made as a result of the comment.

Comment: Concerning §801.142, one commenter noted that the section discusses applicants who have been licensed in another state for 5 consecutive years before the application and those marriage and family therapists who have been licensed for at least 5 years in another state but are currently not licensed. The commenter did not see any reference to marriage and family therapists licensed in another state for less than five years.

Response: The board noted that there is no reference to applicants who were licensed for less than five years in another United States jurisdiction because applicants who were licensed for less than five years in another United States jurisdiction must fully meet the experience requirements for licensure as a licensed marriage and family Therapist. No change was made as a result of the comment.

Comment: Concerning §801.297, one commenter noted that the section is problematic. The commenter stated that if a person is a "potential threat to the public health or safety," then the board should consider taking action against the licensee pursuant to the current rules. The commenter stated that the word "potential threat" is too broad. The commenter stated that if the board believed someone is a potential threat, then the Department staff should open a complaint pursuant to §801.296 and that §801.291 and §801.296 should be adequate to take care of any threats to public safety. Another commenter expressed concern with the addition (under monitoring of licensees) of monitoring of a licensee without a formal complaint and that the process sounded like a witch hunt of a licensee without a formal complaint to justify the monitoring. The commenter also stated that the word "potential" is too broad.

Response: The board agreed in part with the comment. The monitoring provision is included to allow or a process for the board to review the suitability of an applicant for a license when the applicant presents with a criminal history, a history of discipline from another licensing board, a history of malpractice judgments against them or other similar histories that are required to be evaluated by the board. The monitoring provision is made available as a possible alternative to denial of a license to an applicant. The board agreed to use the formal complaints process when it becomes aware of such circumstances regarding current licensees. The board amended §801.297(e) to remove the availability of the process for current licensees and clarified that the monitoring is available as an alternative to the denial of a license.

#### BOARD COMMENTS

Comment: Concerning §801.46(c), one board member commented that the words, "and interpret the test" should be added to the rule. The rule states that a licensee shall not administer any test without the appropriate training and experience to administer the test.

Response: The board agreed with the comments and added the words "and interpret" before the words "any test" and "the test" in §810.46(c).

Comment: Concerning §801.142(1) and (1)(A)(i), a board member indicated that a doctoral program approved by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) requires a minimum of 500 hours of super-



vised clinical experience based on standards that meet or exceed the supervised clinical experience and supervisor requirements of the board. The board member requested that language be added to §801.142(1) and (1)(A)(i) to allow that of the 3,000 hours of the supervised clinical experience requirement for licensure as a Licensed Marriage and Family Therapist that no more than 500 hours may be transferred from a COAMFTE approved doctoral program.

Response: The board agreed with the comment and amended §801.142(1) and (1)(A)(i) accordingly.

Change: The legal cite for the Federal Tax Regulations was revised and updated in §801.2(26)(A), and minor grammatical corrections were included to clarify the rule text in §801.296(a) and (l)(3) due to board staff comments.

## SUBCHAPTER A. INTRODUCTION

### 22 TAC §801.2

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

#### §801.2. Definitions.

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

(1) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or the California Bureau for Private Postsecondary and Vocational Education.

(2) Act--The Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Occupations Code, Chapter 502.

(3) Administrative Law Judge (ALJ)--A person within the State Office of Administrative Hearings who conducts hearings under this subchapter on behalf of the Board.

(4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(5) Associate--A licensed marriage and family therapist associate.

(6) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(7) Client--An individual, family, couple, group, or organization who receives services from a person identified as a marriage and family therapist who is either licensed or unlicensed by the board.

(8) Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

(9) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(10) Department--The Texas Department of State Health Services.

(11) Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different marriage and family therapy regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(12) Family systems--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(13) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(14) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(15) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(16) Investigator--A professional complaint investigator employed by the Department of State Health Services.

(17) License--A marriage and family therapist license, a marriage and family therapist associate license, or a provisional marriage and family therapist license.

(18) Licensed marriage and family therapist--An individual who offers to provide marriage and family therapy for compensation.

(19) Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(20) Licensed marriage and family therapist associate--An individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(21) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term

includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(22) Month--A calendar month.

(23) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(24) Person--An individual, corporation, partnership, or other legal entity.

(25) Pleading--Any written allegation filed by a party concerning its claim or position.

(26) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26, Code of Federal Regulation 1.6033-2, subsection (h) (as in effect in 2008);

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

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(27) Supervision--The guidance or management in the provision of clinical services.

(28) Supervisor--A person meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise an associate and/or marriage and family therapist.

(29) Texas Open Meetings Act--Government Code, Chapter 551.

(30) Texas Public Information Act--Government Code, Chapter 552.

(31) Therapist--For the purposes of this chapter, a Texas licensed marriage and family therapist or a Texas licensed marriage and family therapist associate.

(32) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions.

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 April 28, 2008.

TRD-200802224

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER B. THE BOARD

### 22 TAC §801.17, §801.18

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802211

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

### 22 TAC §§801.41 - 801.54

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant

and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

*§801.42. Professional Therapeutic Services.*

The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate:

(1) marriage therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing marriage life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner;

(2) sex therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(3) family therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member;

(4) child therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child;

(5) play therapy which utilizes systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems;

(6) individual psychotherapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual;

(7) divorce therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive behav-

ioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners;

(8) mediation which utilizes systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. Court appointed mediation requires specialized training period;

(9) group therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span;

(10) chemical dependency therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client;

(11) rehabilitation therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(12) referral services which utilizes systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family;

(13) diagnostic assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary;

(14) psychotherapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(15) hypnotherapy which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(16) biofeedback which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education;

(17) assessment and appraisal which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of

determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems;

(18) consultation which utilizes systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations;

(19) activities under the Texas Family Code, Chapter 153, Subchapter K, pertaining to parenting plan and parenting coordinator;

(20) parent education and parent training including advice, counseling, or instructions to parents or children;

(21) life coaching; and any related techniques or modalities; and

(22) any other related services provided by a licensee.

*§801.44. Relationships with Clients.*

(a) A licensee shall provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee shall make known to a prospective client the important aspects of the professional relationship, including but not limited, to the licensee's status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee shall obtain an appropriate consent for treatment before providing professional services. A licensee shall make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court.

(d) A licensee shall make known to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration shall be given or received by a licensee for the referral of clients for professional services.

(f) A licensee shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(g) A licensee shall not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee shall not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee shall set and maintain professional boundaries. A licensee shall make a reasonable effort to avoid dual relationships. A dual relationship is considered any non-therapeutic activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a dual relationship arises.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of five years for an adult client and 5 years beyond the age of 18 years of age for a minor.

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

(n) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(o) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.

(p) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(q) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.

(r) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(s) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

*§801.46. Testing.*

(a) A licensee shall make known to clients the purposes and explicit use to be made of any testing done as part of a professional relationship.

(b) A licensee shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A licensee shall not administer and interpret any test without the appropriate training and experience to administer and interpret the test.

(d) A licensee must observe the necessary precautions to maintain the security of any test administered by the licensee or under the licensee's supervision.

*§801.47. Drug and Alcohol Use.*

A licensee shall not:

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

(2) use illegal drugs of any kind.

*§801.48. Record Keeping, Confidentiality and Release of Records, and Required Reporting.*

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 611, and

other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, Chapter 611, or other state or federal statutes or rules.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

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

(1) Texas Family Code, Chapter 2614, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

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

(5) A licensee shall comply with Occupations Code, Chapter 109, relating to the release and exchange of information concerning the treatment of a sex offender.

(e) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 for a minor.

(f) A licensee shall retain and dispose of client records in such a way that confidentiality is maintained.

(g) In independent practice, establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services.

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

(1) In addition to the requirements under subsection (d) of this section, if a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider (during therapy or any other course of treatment), the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:

(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;

(B) the board if the misconduct involves a licensee; and

(C) any other state licensing agency which licenses the mental health services provider.

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

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 April 28, 2008.

TRD-200802212

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER D. APPLICATION PROCEDURES

### 22 TAC §801.72

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802213

Waymon Hinson, Ph.D.  
Chair  
Texas State Board of Examiners of Marriage and Family Therapists  
Effective date: May 18, 2008  
Proposal publication date: February 1, 2008  
For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆  
**SUBCHAPTER E. CRITERIA FOR  
DETERMINING FITNESS OF APPLICANTS  
FOR EXAMINATION AND LICENSURE**

**22 TAC §801.92**

**STATUTORY AUTHORITY**

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802214  
Waymon Hinson, Ph.D.  
Chair  
Texas State Board of Examiners of Marriage and Family Therapists  
Effective date: May 18, 2008  
Proposal publication date: February 1, 2008  
For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆  
**SUBCHAPTER F. ACADEMIC REQUIRE-  
MENTS FOR EXAMINATION AND LICENSURE**

**22 TAC §§801.112 - 801.115**

**STATUTORY AUTHORITY**

The adopted amendments and new section are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations

Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802215  
Waymon Hinson, Ph.D.  
Chair  
Texas State Board of Examiners of Marriage and Family Therapists  
Effective date: May 18, 2008  
Proposal publication date: February 1, 2008  
For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆  
**SUBCHAPTER G. EXPERIENCE  
REQUIREMENTS FOR LICENSURE**

**22 TAC §801.142, §801.143**

**STATUTORY AUTHORITY**

The adopted amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

§801.142. *Supervised Clinical Experience Requirements and Conditions.*

The following supervised clinical experience requirements and conditions shall apply.

(1) Supervised clinical experience accrued in Texas may only be accrued under licensure as a Licensed Marriage and Fam-

ily Therapist Associate (with the exception noted in subparagraph (A)(i)(II) and (ii)(III) of this paragraph).

(A) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:

(i) includes at least 3,000 hours of clinical services to individuals, couples or families:

(I) of which at least 1,500 hours must be direct clinical services, 750 hours to couples or families, and the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc;

(II) of the 3,000 hours, no more than 500 hours may be transferred from a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited doctoral program; and

(ii) the applicant must be supervised in a manner acceptable to the board, including:

(I) at least 200 hours of supervision;

(II) of the 200 hours, at least 100 hours must be individual supervision;

(III) of the 200 hours, no more than 100 hours may be transferred from the graduate program;

(IV) at least 50 hours of the post-graduate supervision must be individual supervision.

(B) An associate may practice marriage and family therapy in any established setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(C) During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(D) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or rules.

(E) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision.

(F) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(G) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(H) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes. Up to 50 hours of the 200 hours of face-to-face supervision may occur via telephonic or other electronic media, as approved by the supervisor.

(I) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(J) The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

(2) Supervision and supervised clinical experience accrued toward licensure as a Licensed Marriage and Family Therapist in another jurisdiction are accepted by endorsement only (except as noted in paragraph (1)(A)(ii)(III) of this section).

(A) It is the applicant's responsibility to ensure that supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the supervised clinical experience requirements will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether clinical experience requirements have been met.

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 April 28, 2008.

TRD-200802216

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER H. EXAMINATIONS

### 22 TAC §801.174

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802217

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER I. LICENSING

### 22 TAC §801.201

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802218

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

### 22 TAC §§801.232, 801.235, 801.236

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary

to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802219

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

### 22 TAC §§801.261 - 801.264, 801.266

#### STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802220



Waymon Hinson, Ph.D.  
Chair  
Texas State Board of Examiners of Marriage and Family Therapists  
Effective date: May 18, 2008  
Proposal publication date: February 1, 2008  
For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

### 22 TAC §§801.291, 801.294, 801.296, 801.297, 801.301, 801.303

#### STATUTORY AUTHORITY

The adopted amendments and new section are authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the sections implements Government Code, §2001.039.

#### §801.296. *Complaint Procedures.*

(a) A person wishing to report a complaint or allege a violation of the Act or this chapter by a licensee or other person may notify the department staff. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office. A complaint shall not be accepted by the board office if the official complaint form is not filed within 5 years of the date of termination of the licensee-client relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §801.45 of this title (relating to Sexual Misconduct) or any of the board's other rules relating to sexual misconduct. The board may waive this time limit in cases of egregious acts or continuing threats to public health or safety when presented with evidence that warrants such action.

(b) Upon learning of a complaint, the department staff may assist the person to obtain an official complaint form from the board's web site or offer to send to the complainant an official form which the complainant should complete and return to the board office. The executive director may refer an anonymous complaint for an investigation, if it appears that enough information has been provided regarding the alleged violation to conduct an investigation.

(c) Upon receipt of a written complaint, the department staff shall send an acknowledgment letter to the complainant. The execu-

tive director or executive director's designee shall determine whether the complaint appears to be within the jurisdiction of the board. If the complaint does not appear to be within the jurisdiction of the board, the complaint will not be referred for an investigation, and will be referred to the board for review for jurisdiction. If the complaint does appear to be within the jurisdiction of the board, the executive director shall refer the complaint for an investigation and determine whether to notify the alleged violator of the complaint by mail within 45 days and request that the alleged violator submit a written response regarding the complaint within 15 days of receipt of the notice. The board may consider failure to respond to a request for a response to a complaint or failure to respond to a request for information to be evidence of failure to cooperate in an investigation. If the executive director determines that the respondent to the complaint should not be notified within 45 days by mail, an investigator of the department shall notify the respondent of the complaint by letter, by telephone, or in person.

(d) Department investigative staff shall collect all information related to the complaint. Department investigative staff shall prepare an investigative report or summary. The chair shall appoint an ethics committee, which shall include at least one public board member, to review the complaint and the supporting documentation. The ethics committee shall be appointed to work with the executive director to:

(1) review each complaint and determine what action to take, if any;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) dismiss complaint cases on which no formal action will be taken or recommend formal action to be taken and participate in subsequent due processes afforded to the respondent under the Act or this chapter.

(e) Department staff shall keep an information file about each complaint which will include the following:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made in each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(f) Department staff shall periodically notify the parties to the complaint of status of the complaint until the complaint is resolved.

(g) The ethics committee, executive director, or executive director's designee may request further investigation of the complaint.

(h) After an investigation has been completed, the person completing the investigation shall submit the findings to the ethics committee, executive director, or executive director's designee. The written investigative report shall set out all facts obtained during the investigation. If the ethics committee determines that there are insufficient grounds to support the finding of a violation or act upon the complaint, the ethics committee may dismiss the complaint with a finding of no violation. Department staff shall give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(i) If the ethics committee determines that there are sufficient grounds to support the finding of one or more violations, the ethics committee will consider the relevant factors identified in §801.301 of

this title and the severity level and sanction guide in §801.302 of this title and determine what recommended action to take against the respondent to the complaint, if any. The Ethics Committee will report to the board any proposed disciplinary actions to be taken against a licensee. If the respondent is not a licensee of the board or a person whose expired license is no longer renewable and is found to have violated the Occupations Code, Chapter 502, the board may issue an order to cease and desist and may refer the case to the Office of Attorney General for appropriate action.

(j) If the committee determines that a violation exists and that the circumstances surrounding the violation did not involve a serious risk of or did not result in significantly affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as an advisory notice or warning letter. The committee may also issue an advisory notice or a warning letter if the complaint did not result in a violation, but the circumstances surrounding the complaint are of concern of the board.

(k) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the Ethics Committee for authorization for an emergency suspension of the license.

(l) Ethics Committee meetings and policy are as follows:

(1) The Ethics Committee will meet on a regular basis to review and recommend action on complaints filed against licensees. Additionally, the committee will hold informal hearings to review previous committee actions at the request of a respondent.

(2) An agenda and completed reports of complaint investigations will be sent to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number. At the discretion of the executive director or the ethics committee members, a recording may be made of the ethics committee meeting, with the exception that an executive session may not be recorded.

(3) Persons who are not members of the committee are permitted to observe committee work unless the committee enters into executive session for legal consultation. Committee members, staff, consultants and licensees against whom the complaint is filed and the person filing the complaint may participate in the discussion of a complaint pending action before the committee. The committee chair or committee by vote may impose time limitations on discussion.

(4) A report on all completed investigations will be provided to committee members. The report will include copies of information obtained in the investigation and a summary sheet with a staff recommendation for the disposition for each case. Cases that are recommended for closure may be listed together as a consent agenda item. Any committee member, consultant, or staff person may remove cases from the consent agenda for individual review upon request. All cases left on the consent agenda will be voted on as a group for closure. All other cases will be considered on an individual basis.

(5) The committee will base its decision regarding the validity of a complaint on the evidence documented in the report of the investigation. The committee may find that there is or is not evidence of a violation of licensing law or rules or the committee may request additional information of a case for later review. If the committee finds that a licensee has violated licensing law or rules, the committee will consider the established policy guidelines and other relevant factors in their recommendation of disciplinary action.

(6) All parties to a complaint will be notified of the findings and recommendations of the committee. The respondent to a complaint who disagrees with the action of the committee may submit a written statement of the reasons for his or her disagreement, and may request an informal hearing before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

§801.297. *Monitoring of Licensees.*

(a) The department shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports, if ordered by the board. The report shall be scheduled at intervals appropriate to each individual situation.

(c) The executive director or executive director's designee shall review the reports and notify the ethics committee if the requirements of the disciplinary action are not met.

(d) The ethics committee may consider more severe disciplinary proceedings if non-compliance occurs.

(e) As an alternative to the denial of a license, the board may, as a condition of initial licensure, require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against their license, but must comply fully with the order of the board or face possible formal disciplinary action levied by the board. Factors that may constitute a potential threat to public health or safety may include, but are not limited to, reports of chemical abuse by a licensee, mental and/or physical health concerns, and/or criminal activity or allegations, whether pending or in final disposition by a court of law.

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

Filed with the Office of the Secretary of State on April 28, 2008.

TRD-200802221

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆  
SUBCHAPTER M. LICENSING OF PERSONS  
WITH CRIMINAL BACKGROUNDS

22 TAC §801.332

STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license

holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regard an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802222

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER N. INFORMAL CONFERENCES

### 22 TAC §801.351

#### STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.104, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the Department; by Occupations Code, §502.151, which authorizes the board to adopt rules necessary to determine the qualifications and fitness of a license applicant and to establish standards of conduct and ethics for license holders; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; by Occupations Code, §502.153, which authorizes the board to set fees; by Occupations Code, §502.204, which authorizes the board to adopt rules concerning the investigation of a complaint filed with the board; by Occupations Code, §502.303, which requires the board to establish mandatory continuing education requirements for license holders; and, by Occupations Code, §502.353, which requires the board to adopt procedures regarding an informal proceeding held in compliance with Government Code, §2001.056. Review of the section implements Government Code, §2001.039.

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 April 28, 2008.

TRD-200802223

Waymon Hinson, Ph.D.

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 18, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 458-7111 x6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 13. MISCELLANEOUS INSURERS SUBCHAPTER D. RISK RETENTION GROUPS AND PURCHASING GROUPS

##### 28 TAC §13.313

The Commissioner of Insurance adopts amendments to §13.313, concerning the annual registration filing date for purchasing groups. The amendments are adopted without change to the proposal published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1485).

**REASONED JUSTIFICATION.** The adopted amendments to §13.313(c) are necessary to change the current annual registration filing dates for purchasing groups and to establish a single annual registration filing date requirement of on or before July 1 of each year. This change to a single annual registration filing date will standardize the filing requirements in Texas with those of other states. Purchasing group industry representatives requested that the Department consider adopting a single annual registration filing date for all purchasing groups because the majority of states have already done so. In addition, the current requirement, which allows multiple registration filing dates, results in an inefficient use of Department resources; requiring the same annual registration filing date for all purchasing groups will enable the Department to more efficiently utilize its resources.

The amendment to §13.313(c) also requires each purchasing group to file its current information on Form PG1R instead of Form PG1. This change is necessary because Form PG1R specifically requires only information directly relevant to the renewal of a purchasing group's registration, whereas Form PG1 requires all information relevant to the initial registration of a purchasing group. The adopted amendments also amend §13.313(a) and (b) to replace the reference to the State Board of Insurance with a reference to the Commissioner of Insurance. This change is necessary because the State Board of Insurance was abolished effective September 1, 1994, and the Commissioner of Insurance was granted the authority previously granted to the State Board of Insurance, pursuant to Acts 1993, 73rd Legislature, ch. 685, §1.23. The adopted amendments to §13.313(a) and (b) update statutory references in accordance with the nonsubstantive revised Insurance Code. The adopted amendments also delete §13.313(b)(6) which requires the use of Form PG2, a form no longer used because the collection of premium taxes from purchasing groups is a function of the Texas Comptroller of Public Accounts, and not the Department.

**HOW THE SECTION WILL FUNCTION.** Amended §13.313(c) changes the current annual registration filing dates for purchasing groups and establishes a single annual registration filing date

requirement. Amended §13.313(c) requires purchasing groups to file current information on or before July 1 of each year on Form PG1R. Amended §13.313(a) and (b) replace the reference to the State Board of Insurance with the updated reference to the Commissioner of Insurance, replace obsolete statutory references with updated references in accordance with the nonsubstantive revised Insurance Code, and delete §13.313(b)(6) to no longer require the use of obsolete Form PG2.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** The Department did not receive any comments on the proposed amended sections.

**STATUTORY AUTHORITY.** The amendments are adopted pursuant to the Insurance Code Chapter 2201 and §36.001. Section 2201.008 provides that the Commissioner may adopt rules necessary to carry out Chapter 2201, relating to the regulation of risk retention groups and purchasing groups. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on April 22, 2008.

TRD-200802121

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: May 12, 2008

Proposal publication date: February 22, 2008

For further information, please call: (512) 463-6327



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 1. CENTRAL ADMINISTRATION SUBCHAPTER B. PUBLIC INFORMATION

##### 34 TAC §1.200

The Comptroller of Public Accounts adopts the repeal of §1.200, concerning charges for public information. The repeal is adopted without changes to the proposal as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2529).

Section 1.200 is being repealed because it was superseded and made obsolete by Acts 2005, Chapter 716, §6, 79th Legislature, 2005, effective September 1, 2005. The Texas Public Information Act currently provides, in Government Code, §552.262, that the Attorney General sets out the cost rules that state agencies must use for public information costs.

Government Code, §552.262 does allow agencies to seek a variance from the cost rules, if sought in writing and if formally approved by the Attorney General, with publication of that variance in the *Texas Register*. This agency has not sought a variance from the Attorney General's cost rules; thus, as required by statute, we abide by the Attorney General's cost rules. There-

fore, since the authority that state agencies had to promulgate cost rules has been abolished, and since we do follow the Attorney General's cost rules, §1.200 is no longer needed.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, §2001.039(e).

The repeal implements Government Code, §552.262.

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 April 23, 2008.

TRD-200802160

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: May 13, 2008

Proposal publication date: March 21, 2008

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



## CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER S. MOTOR FUEL TAX

### 34 TAC §3.438

The Comptroller of Public Accounts adopts an amendment to §3.438, concerning signed statements for purchasing dyed diesel fuel tax free, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2263).

Subsection (c) is amended to provide that signed statements used to purchase dyed diesel fuel tax free be substantially in the form provided by the comptroller and to delete the telephone numbers for Telecommunication Device for the Deaf (TDD) that are no longer used. Copies of blank signed statement forms will no longer be available for inspection at the office of the Texas Register.

No comments were received regarding adoption of the amendment.

This amendment 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 amendment implements Tax Code, §162.206.

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 April 28, 2008.

TRD-200802193

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: May 18, 2008

Proposal publication date: March 14, 2008

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



CHAPTER 7. PREPAID HIGHER EDUCATION  
TUITION PROGRAM  
SUBCHAPTER K. HIGHER EDUCATION  
SAVINGS PLAN

**34 TAC §7.103**

The Comptroller of Public Accounts adopts amendments to §7.103, concerning tax benefits and securities laws exemptions. The amendments are adopted without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1999).

The amendments are adopted to ensure that contributions to savings trust accounts established through the higher education savings plan created by Education Code, Chapter 54, Subchapter G, do not exceed the amount necessary to pay the qualified higher education expenses of a designated beneficiary, to clarify language, and update citations.

The amendments make substantive and technical changes to subsection (c), which concerns the prohibition of excess contributions to savings trust accounts. Amendments are adopted to change the method used by the board to determine the highest amount that may be contributed on behalf of a designated beneficiary, termed the "maximum account balance," from a rigid formula to a flexible method under which the board may adopt either the amount produced by using an adopted formula, or a lesser amount as determined by the board. The adopted amendments require the plan manager to maintain records to ensure that no account or combination of accounts exceeds the maximum account balance, and provide for the aggregation of all accounts and prepaid higher education tuition contracts established for a designated beneficiary when assessing if an account balance exceeds the maximum amount.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program.

This amendments implement Education Code, §54.702, which requires the board to make changes necessary to maintain the income tax benefits or treatment provided by Internal Revenue Code, §529, and to adopt a policy to prevent contributions to an account in excess of the amount necessary to pay the qualified higher education expenses of the beneficiary.

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 April 23, 2008.

TRD-200802161

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: May 13, 2008

Proposal publication date: March 7, 2008

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



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

**CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES**

**SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION**

**DIVISION 1. DEFINITIONS AND BOARD OPERATIONS**

**40 TAC §109.243**

The Texas Health and Human Services Commission ("HHSC"), on behalf of the Texas Department of Assistive and Rehabilitative Services ("DARS"), adopts the amendments to Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter B, Board for Evaluation of Interpreters and Interpreter Certification, Division 1, Definitions and Board Operations, §109.243, Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate. The rule is adopted without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2270).

Additionally, this adopted rule is replacing the emergency amendment to §109.243, which was published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 817). The emergency amendment to §109.243 is being contemporaneously withdrawn elsewhere in this issue of the *Texas Register* with the adoption on this final rule. The Emergency amendment of §109.243 is scheduled to expire by law on May 15, 2008.

The amendment to §109.243 adds more substantive grounds for denying, suspending, or revoking the certification of interpreters for the deaf, including grounds relating to allegations of criminal behavior or other misconduct by interpreters certified by DARS. Complaints against certified interpreters have increased and become more serious in nature since the adoption of recent federal regulations by the U.S. Department of Education (specifically 34 Code of Federal Regulations §300.156, published August 2006) and state rules by the Texas Education Agency (specifically 19 TAC §89.1131(a) and (d), adopted November 2007), which require school districts to employ only licensed or certified interpreters for deaf students. Complaints received by DARS have included allegations of crimes against children and disabled individuals. Currently, the permanent rules of DARS relating to the certified interpreter program covers only convictions for criminal acts, which in many cases may take years to occur, if ever. These amendments will allow DARS to initiate disciplinary proceedings on allegations of rule violations and to take appropriate disciplinary action where legally supported by facts and credible evidence, to protect the health and safety of the public.

Government Code, §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 109.243 has been reviewed and the department has determined that reason for adopting the rule, which was to protect the general public from misconduct and/or the illegal acts of certified interpreters, continues to exist.

However, the rule review identified areas where amendments were needed to strengthen the rule. These amendments are being proposed for the reasons described above in this preamble. Note that Title 40, Part 2, Chapter 109, was proposed for review in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8864).

No comments were received regarding the adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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 April 24, 2008.

TRD-200802167

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: May 15, 2008

Proposal publication date: March 14, 2008

For further information, please call: (512) 424-4050



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 25. TRAFFIC OPERATIONS SUBCHAPTER D. BICYCLE ROAD USE

##### 43 TAC §§25.50, 25.51, 25.53

The Texas Department of Transportation (department) adopts amendments to §25.50, purpose, §25.51, definitions, and §25.53, bicycle use on the state highway system. The amendments to §§25.50, 25.51 and 25.53 are adopted without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1299) and will not be republished.

##### EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2001.039 requires state agencies to readopt their rules every four years or more frequently and, prior to readopting, to consider whether the reason for adopting each rule continues to exist. In the course of reviewing the administrative rules pertaining to bicycle road use, the department identified three sections that require minor revisions.

Amendments to §25.50, Purpose, correct an outdated statutory reference and an outdated reference to a division of the chapter.

Amendments to §25.51, Definitions, correct an outdated reference to a division of the chapter.

Amendments to §25.53, Bicycle Use on the State Highways, delete paragraph (4), which relates to the preparation of a statewide comprehensive bicycle plan. When this section was

originally adopted, it was considered the best practice for the department to prepare the plan. However, this work is currently accomplished by a city or county and the applicable metropolitan planning organization. Department staff members participate and provide assistance to the local entities with regard to these planning efforts.

##### COMMENTS

No comments on the proposed amendments were received.

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.902, which requires the commission to adopt rules relating to the use of roads in the state highway system by bicyclists.

##### CROSS REFERENCE TO STATUTE

Transportation Code, §201.902.

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 April 25, 2008.

TRD-200802174

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: May 15, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



#### CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Transportation (department) adopts amendments to §28.2, Definitions; §28.11, General Over-size/Overweight Permit Requirements and Procedures; §28.12, Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D; §28.13, Time Permits; §28.14, Manufactured Housing, and Industrialized Housing and Building Permits; §28.15, Portable Building Unit Permits; §28.16, Permits for Military and Governmental Agencies; §28.30, Permits for Over Axle and Over Gross Weight Tolerances; §28.64, Annual Permits; §28.91, Responsibilities; §28.92, Permit Issuance Requirements and Procedures; §28.101, Responsibilities; and §28.102, Permit Issuance Requirements and Procedures and new §28.110, Purpose; §28.111, Applicability; §28.112, Falsification of Information on Application and Permit; §28.113, Shipper Certificate of Weight; §28.114, Compliance with Remote Permit System; §28.115, Permits Issued by Another State; §28.116, Permit Compliance; §28.200, Purpose; §28.201, Investigations and Inspections of Records; §28.202, Records; §28.300, Purpose; §28.301, Administrative Penalties; §28.302, Administrative Sanctions; §28.303, Implications for Nonpayment of Penalties; Grounds for Action; §28.304, Administrative Proceedings; §28.305, Settlement Agreements; and §28.306, Administrative Penalty for False Information on Certificate by a Shipper all concerning oversize and overweight vehicles and

loads. The effective date for these rules is June 1, 2008. The amendments to §§28.11 - 28.16, 28.30, 28.64, 28.91, 28.92, 28.101, and 28.102 and new §§28.110 - 28.112, 28.114 - 28.116, 28.200 - 28.202, and 28.300 - 28.306 are adopted without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1301) and will not be republished. Section 28.2, Definitions, and §28.113, Shipper Certificate of Weight, are adopted with changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1301).

#### EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The adopted amendments and new sections are necessary to implement the provisions of House Bill 2093, 80th Legislature, Regular Session, 2007; to clarify existing information; update statutory references; add guidelines regarding fees and the issuance of envelope vehicle permits; and streamline the permit-issuing processes used by the Port of Brownsville and by Chambers County.

House Bill 2093 increases certain oversize and overweight permit fees and gives the department the authority to investigate, enforce, impose administrative penalties, and revoke credentials for violating statutes, rules, or orders regarding oversize and overweight limits or for providing false information on any documentation submitted to the department. The bill also authorizes the department to enter into the Unified Carrier Registration (UCR) system, which was designed to replace the Single State Registration System (SSRS) in which the state participated.

The term "temporary registration" was changed to "temporary vehicle registration" throughout 43 TAC Chapter 28 to distinguish between motor carrier registration (credentialing) and motor vehicle registration under Transportation Code, Chapter 502.

Amendments to §28.2 provide additional definitions and clarify terms used throughout this chapter and add terms used in the new enforcement process. Definitions for truck and truck-tractor are added to provide precise definitions of these two terms for the purposes of this chapter. The department has changed the definition of director to add the language "or a designee not below the level of division director" to conform the provisions of 43 TAC Chapter 28 with 43 TAC Chapter 18. This change allows the department to handle the administrative enforcement provisions for both motor carrier registration and oversize and overweight permits with the same process.

Amendments to §28.11 increase permit fees to comply with the provisions of House Bill 2093. The bill increased the permit fees in Transportation Code, §623.076 and the maintenance fees in Transportation Code, §623.077. References to fees in Figure 43 TAC §28.30(e)(3)(C) in this section were amended to correspond with the new statutory fees.

Section 28.11 is also amended to correct a statutory reference to the Insurance Code. The requirement for nonresident insurance agents is now located in Insurance Code, Chapter 4056, Nonresident Agent.

Amendments to §28.12 increase the fee for a single trip permit issued under Transportation Code, §623.076 to correspond with the statutory fee increase from House Bill 2093.

Amendments to §28.13 increase fees for 30-day, 60-day, and 90-day permits and annual permits for implements of husbandry and water well drilling machinery due to changes in Transporta-

tion Code, §623.076. The fee increases correspond with the statutory increases from House Bill 2093.

The amendment to §28.13(e)(4)(A)(iii) increases the fee for annual envelope vehicle permits from \$2,000 to \$4,000. Transportation Code, §623.071(c) and (d) states that the department may issue annual permits for the transport of overweight or oversize equipment that does not exceed 12 feet wide, 14 feet high, 110 feet long, and 120,000 pounds. These permits are commonly referred to as annual envelope permits. Before being amended by House Bill 2093, Transportation Code, §623.076(c) authorized the Texas Transportation Commission (commission) by rule to set the fee for an annual envelope permit in an amount not to exceed \$3,500. The commission set the fee at \$2,000. The fee for a corresponding single trip permit to transport one load was \$80, which is the sum of the \$30 permit fee (Transportation Code, §623.076(a)(1)) and the \$50 maintenance fee (Transportation Code, §623.077(a)). Under that fee schedule, it was cost effective for customers who projected the need in one year for more than 25 single trip permits to transport loads that would qualify for an annual envelope permit to purchase the annual permit in lieu of single trip permits (\$80 single trip permit fee x 25 permits = \$2,000).

In general, House Bill 2093 doubled or tripled the fees for the oversize/overweight permit types issued by the department. Amendments to Transportation Code, §623.076(a)(1) and §623.077 increase the fee for a single trip permit for loads comparable to those allowed under an annual envelope permit from \$80 to \$210. Additionally, the bill doubled the maximum provided for annual envelope permits under Transportation Code, §623.076(c) to \$7,000. Without an increase in the fee for an annual envelope permit, the break-even point decreases from 25 to about 10 single trip permits. Increasing the fee for an annual envelope permit to \$4,000 provides a break-even point at about 19 single trip permits, which is much closer to the original fee structure.

The \$4,000 annual envelope permit fee will go into effect June 1, 2008. All annual envelope permit applications for an initial permit received after June 1, 2008 will require the \$4,000 permit fee. All current annual envelope permit holders with permits expiring after May 31, 2008 will be notified of the increased fee in the renewal notice.

New §28.13(e)(4)(C), (D), and (E) aid the department in decreasing the number of fraudulent requests for replacement of an original annual envelope vehicle permit--company specific, by providing an audit trail when the first permit is received. This type of permit is to be carried in only one vehicle at a time. Fraudulent requests occur when an applicant desires to operate multiple vehicles simultaneously without paying additional permit fees. Without an audit trail, the department is forced to honor each permit replacement request, at the expense of lost revenue to the state.

The seven-day waiting period for receipt of the initial permit is to allow more than reasonable time for the customer to receive the permit, regardless of how remote an address may be. Registered mail and overnight delivery services normally take less than five days. During this seven-day period, permit replacement requests will not be accepted or considered. The 10-day waiting period after the date the permit is issued, for initiation of a request for replacement, simply adds three days to allow sufficient time for tracking records to be in place before a request can be reviewed. These periods are to maintain a timely response process.

Currently, there is nothing in the rules that allows the department to refuse fraudulent requests for duplicate permits. This amendment levels the playing field for customers, including those who do pay for multiple permits to legally operate multiple trucks. It also allows the department to collect more fees that are used to repair road damage caused by these oversize/overweight loads.

The amendment to §28.14(d) increases the fee for a manufactured housing and industrialized housing and building oversize/overweight permit, to comply with the changes to Transportation Code, §623.096(a).

The amendment to §28.15(d) increases the fee for a portable building unit oversize/overweight permit, to comply with the changes to Transportation Code, §623.124(a).

Amendments to §28.16 clarify existing language to state that military and government agencies are eligible for all oversize/overweight permits issued by the department, that military and government entities do not have to pay the permit fee as long as the load is transported on vehicles with exempt license plates, and that all permit restrictions and requirements apply. The language currently implies that only route restricted oversize and overweight permits were available to government and military entities free of charge. Additional changes were made to this section to correct references to other subchapters of 43 TAC Chapter 28.

The amendment to the figure in §28.30 increases annual permit fees for over axle and over gross weight tolerances to comply with the new provisions of Transportation Code, §623.0111(a)(2).

The amendment to §28.64 increases annual unladen lift permit fees to comply with the new provisions of Transportation Code, §623.182.

Amendments to 43 TAC Chapter 28, Subchapter G, Port of Brownsville Port Authority Permits and Subchapter H, Chambers County Permits make the language of the subchapters more consistent with each other. The Port of Brownsville and Chambers County both are statutorily authorized to issue overweight and oversize permits for specific roadways in their jurisdictions. The two programs are handled in the same manner so the provisions for each subchapter should be consistent.

Amendments to §28.91 and §28.101 allow the department to determine if a bond is necessary to offset the cost of maintenance. Under this change, the department may require the bond only if the sale of permits has not generated sufficient funds to cover the cost of the roadway maintenance. The Port of Brownsville permit sales have established that the continued requirement of the bond is unnecessary because sufficient maintenance funds have been available from the permit fees. The change to this rule allows the department to waive the bond requirement.

All other amendments to §§28.91, 28.92, 28.101, and 28.102 make the requirements and language consistent between Port of Brownsville Authority Permits and Chambers County Permits, reorganize the sections so that the information is in a more understandable format, clarify the existing language, and update processes that have recently been automated. The changes include deleting the name of the employee who issued the permit from the permit requirements because most permits are processed automatically without employee involvement in the process. The language is amended to clarify that the funds must be deposited into the state highway fund as required by statute. This change also requires an amendment to the

maintenance contract requirements to remove the requirement that the permitting entity make payments to the department for maintenance.

New Subchapter I, Compliance, sets out the procedures for citing violations related to the operation of vehicles on public roadways in excess of maximum weight, height, and width requirements.

New §28.110, Purpose, provides the purpose of the new subchapter.

New §28.111, Applicability, provides that a person operating on a public roadway without an oversize or overweight permit shall comply with the weight and size restrictions of Transportation Code, Chapters 621, 622, and 623. This section also requires a person operating a vehicle under an overweight or oversize permit to comply with all the provisions of the permit. This section is added to provide notification to motor carriers and other operating oversize and overweight vehicles that failure to obtain a required permit or to abide by the provisions and conditions of the issued permit could lead to enforcement actions.

New §28.112, Falsification of Information on Application and Permit, provides that a person who gives false information on a permit application or other required forms commits a violation that is subject to enforcement under Subchapter K, Enforcement. The new section also prohibits a person from altering a permit issued by the department or counterfeiting a permit. This section is added to ensure that the public understands that failure to provide correct information when requesting a permit can lead to enforcement action.

New §28.113, Shipper Certificate of Weight, provides the requirements for a shipper's certificate of weight to be valid. The certificate is authorized by Transportation Code, §623.274, as added by House Bill 2093. The new certificate can be used by the permit holder to provide an affirmative defense to overweight violations based on weight of the commodity being transported. The new section requires that the permit holder obtain the shipper's certification before applying for the permit and that the shipper certify that the information on the certificate is correct. In response to comments, this section now provides that a shipper's certificate of weight is also valid if it is delivered before the transportation of the shipment begins if the transporter determines from the certificate that a permit is not required. New language for new subsection (b) now provides that a motor carrier with an annual envelope permit may rely on a certificate issued after the annual permit has been issued. The former subsection (b) is re-designated as subsection (c) and revised to clarify that obtaining a permit is not a prerequisite for the use of the affirmative defense provided by that subsection.

New §28.114, Compliance with Remote Permit System, provides guidance for persons authorized by contract to access the electronic application process. This new section grants the department the authority to seek administrative sanctions against a person who does not comply with the terms of the contract and the conditions of the permits.

New §28.115, Permits Issued by Another State, provides that a permit issued by another state under a reciprocal agreement is subject to all provisions of 43 TAC Chapter 28 and to the applicable provisions of Transportation Code, Chapters 621, 622, and 623. This new section will allow the department to enforce the department's overweight and oversize permit rules for permits issued under the reciprocal agreements.



New §28.116, Permit Compliance, provides that a permit issued under this chapter is invalid immediately upon violation of a rule, condition, or requirement placed on the permit. The rule clarifies that once the permit is invalid, movement of the overweight or oversize vehicle over a public roadway is no longer authorized and may lead to enforcement action.

New Subchapter J, Records and Inspections, provides requirements for how applicable records must be maintained and how long the records are to be maintained, and describes the department's procedures for examining the records.

New §28.200, Purpose, provides the justification for the new subchapter.

New §28.201, Investigations and Inspections of Records, sets out that the department can enter a person's place of business during normal business hours to investigate violations under Transportation Code, Chapters 621, 622, or 623 or 43 TAC Chapter 28. The department must have access to the person's records to investigate any potential violations. The section provides that the inspector will provide proof of the inspector's authority to inspect the records by presenting credentials and a written statement from the department indicating the authority. In addition, the section also provides that the department can designate a time and location for the inspection of the records if the time and location cannot be agreed upon by the parties involved. This authority will prevent a person from avoiding administrative sanctions by prohibiting access to the records necessary to conduct an investigation.

New §28.202, Records, provides what records must be maintained and where the records must be located. The records include those types of records used by motor carriers in their daily operation that relate to the movement and weight of shipments and other records required elsewhere in 43 TAC Chapter 28 or the Transportation Code. This section requires that the records be maintained not less than two years at the person's principal business address. This section also requires that a copy of the permit be maintained in the vehicle for which the permit was issued during the period that the permit is being used. These requirements will ensure that the records necessary for the department to investigate overweight and oversize violations are maintained by the person and are available for inspection when needed.

New Subchapter K, Enforcement, is added to provide the administrative process for enforcement actions for violations of 43 TAC Chapter 28. House Bill 2093 authorized the department to take administrative action against motor carriers or individuals who violate the weight and size restrictions for vehicles or violate a provision of an overweight or oversize permit.

New §28.300, Purpose, lists the purpose of the new subchapter.

New §28.301, Administrative Penalties, describes the administrative penalties the department will seek for violations of 43 TAC Chapter 28. This section sets out the amounts of penalties, not to exceed \$5,000 for each violation or \$15,000 if the person knowingly committed the violation. The penalties in this section comply with the penalties of Transportation Code, §643.251. This section also provides that the penalty recommendation will be based on certain factors including the seriousness of the violation, economic harm, history of previous violations, amount necessary to deter future violations, efforts to correct violations, and any other matters that justice may require. These factors are the same factors used under 43 TAC Chapter 18, for similar motor carrier enforcement procedures.

New §28.302, Administrative Sanctions, describes the administrative sanctions the department may seek for violations of 43 TAC Chapter 28. House Bill 2093 authorized the department to revoke, suspend, or deny overweight and oversize permits if the person violates any provision of 43 TAC Chapter 28 or Transportation Code, Chapters 621, 622, or 623. This section also provides the guidelines for the probation of a suspension of a permit. These guidelines will help ensure that the department is consistent in administering the probation program.

New §28.303, Implications for Nonpayment of Penalties; Grounds for Action, provides that if the person fails to pay an administrative penalty assessed under this subchapter the department may not issue oversize or overweight permits to the individual. As authorized by House Bill 2093, this provision will prevent a person from ignoring penalty obligations by requiring that they pay prior penalties before a new permit can be issued.

New §28.304, Administrative Proceedings, is added to provide the notice requirements for the new administrative hearing process. The language tracks Transportation Code, §643.2525 and clarifies the two types of notices mailed to the alleged violator.

New §28.305, Settlement Agreements, details the settlement agreement process. The department may enter into a compromise settlement agreement with an alleged violator any time before the issuance of a final order. This section provides that the agreement must include a clause that allows the department the authority to revoke the agreement if the alleged violator fails to abide by the terms of the agreement. This provision will ensure that the department continues to have authority to enforce future compliance.

New §28.306, Administrative Penalty for False Information on Certificate by a Shipper, provides that the department may investigate and impose penalties against a shipper who provides false information on a shipper's certificate of weight. This section provides for how the notice and hearing requirements will be handled and how the amount of administrative penalties will be determined.

#### COMMENTS

One comment on the proposed amendments and new section was received from the Texas Motor Transportation Association (TMTA). TMTA stated that they support the proposed rules with the exception of the language in §28.113, Shipper Certificate of Weight.

Comment: TMTA commented that the language in §28.113 does not consider a situation in which a motor carrier, or motor carrier that holds an annual envelope permit, determines, based on the weight given by the shipper, that an overweight permit or additional overweight permit is not required and later finds out that the shipper underestimated the actual weight of the load.

Response: The department agrees with the comment. The language of the rule is subject to that misinterpretation. The department intends to allow a motor carrier to rely on the shipper's certificate of weight to determine whether an overweight permit or additional overweight permit is required. If the weight of the shipment provided on the certificate does not require the carrier to obtain a permit or an additional permit, the carrier should be able to rely on that information and present the certificate during any enforcement action to show that the weight information on which it relied was incorrect. The department does not intend that the carrier obtain a permit as a prerequisite for relying on

the weight information provided by the shipper in the certificate. Accordingly, the language in §28.113(a) is revised to add that a shipper's certificate of weight is valid if it is delivered before the transportation of the shipment begins if the transporter determines from the certificate that a permit is not required. A new §28.113(b) is added to expressly provide that the holder of an annual envelope permit may rely on the weight information on the certificate to determine whether an additional overweight permit is required for the shipment. Former §28.113(b) is re-lettered as subsection §28.113(c) and revised to clarify that obtaining a permit is not a prerequisite for the use of the affirmative defense provided by that subsection.

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §28.2

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

#### §28.2. Definitions.

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

- (1) Annual permit--A permit that authorizes movement of an overdimension load for one year commencing with the "movement to begin" date.
- (2) Applicant--Any person, firm, or corporation requesting a permit.
- (3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.
- (4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.
- (5) Cash collection office--An office that has been designated as the place where a permit applicant can apply for a permit or pay for a permit with cash, cashier's check, personal or business check, or money order.
- (6) Closeout--The procedure used by the MCD to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.
- (7) Commission--The Texas Transportation Commission.
- (8) Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.
- (9) Concrete pump truck--A self propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.
- (10) Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for

power on a chassis permanently constructed or assembled for such purpose.

- (11) Credit card--A credit card approved by the department and a permit account card.
- (12) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.
- (13) Department--The Texas Department of Transportation.
- (14) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.
- (15) Director--The Executive Director of the Texas Department of Transportation or a designee not below the level of division director.
- (16) District--One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.
- (17) District engineer--The chief executive officer in charge of a district of the department.
- (18) Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.
- (19) Escort vehicle--A motor vehicle used to warn traffic of the presence of a permitted vehicle.
- (20) Foreign commercial vehicle annual registration--An annual registration permit issued by the department to foreign commercial vehicles under authority of Transportation Code, §502.353.
- (21) Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.
- (22) Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.
- (23) Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.
- (24) Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.
- (25) Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.
- (26) Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.
- (27) Hubometer--A mechanical device attached to an axle on a unit or a crane for recording mileage traveled.
- (28) HUD number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(29) Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(30) Load-restricted bridge--A bridge that is restricted by the commission, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(31) Load-restricted road--A road that is restricted by the commission, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(32) Machinery plate--A license plate issued under Transportation Code, §504.504.

(33) Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(34) Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined in §18.2 of this title (relating to Definitions).

(35) Motor Carrier Division (MCD)--The Motor Carrier Division of the department.

(36) Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643 as amended.

(37) Nighttime--The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by Transportation Code, §541.401.

(38) Nondivisible load--A load that cannot be reduced to a smaller dimension without compromising the integrity of the load or requiring more than eight hours of work using appropriate equipment to dismantle.

(39) Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(40) Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(41) One trip registration--Temporary vehicle registration issued under Transportation Code, §502.354.

(42) Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(43) Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(44) Overheight--An overdimension load that exceeds the maximum height specified in Transportation Code, §621.207.

(45) Overlength--An overdimension load that exceeds the maximum length specified in Transportation Code, §621.203, §621.204, §621.205, and §621.206.

(46) Overweight--An overdimension load that exceeds the maximum weight specified in Transportation Code, §621.101.

(47) Overwidth--An overdimension load that exceeds the maximum width specified in Transportation Code, §621.201.

(48) Permit--Authority for the movement of an overdimension load, issued by the MCD under Transportation Code, Chapter 623.

(49) Permit account card (PAC)--A debit card that can only be used to purchase a permit or temporary vehicle registration and which is issued by a financial institution that is under contract to the department and the Comptroller of Public Accounts.

(50) Permit officer--An employee of the MCD who is authorized to issue an oversize/overweight permit or temporary vehicle registration.

(51) Permit plate--A license plate issued under Transportation Code, §504.504, to a crane or an oil well servicing vehicle.

(52) Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(53) Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit or temporary vehicle registration by the MCD.

(54) Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(55) Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(56) Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(57) Principal--The person, firm, or corporation that is insured by a surety bond company.

(58) Recyclable materials--Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recycled material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(59) Registration reduction--A 25% reduction of the permit fee that applies to a crane or oil well servicing unit registered for maximum legal weight.

(60) Shipper--Person who consigns the movement of a shipment.

(61) Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(62) Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(63) Single state registration (SSR)--Interstate registration authority issued to motor carriers under authority of 49 U.S.C. §14504 and Transportation Code, Chapter 645.

(64) Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(65) State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(66) State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(67) Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the department for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(68) Tare weight--The empty weight of any vehicle transporting an overdimension load.

(69) Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration, as defined by Transportation Code, §502.352.

(70) Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(71) Time permit--A permit issued for a specified period of time under §28.13 of this title (relating to Time Permits issued under Transportation Code, Chapter 623, Subchapter D) and in accordance with Transportation Code, Chapter 623.

(72) Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.

(73) Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(74) Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(75) Truck-tractor--A motor vehicle designed or used primarily for drawing another vehicle:

(A) that is not constructed to carry a load other than a part of the weight of the vehicle and load being drawn; or

(B) that is engaged with a semitrailer in the transportation of automobiles or boats and that transports the automobiles or boats on part of the truck-tractor.

(76) Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(77) Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(78) Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(79) Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(80) Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(81) Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.

(82) Vehicle--Every device in or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

(83) Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with §17.3(b) of this title (relating to Motor Vehicle Certificates of Title) for the purpose of identification.

(84) Vehicle supervision fee--A fee required by Transportation Code, §623.078, paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices.

(85) Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(86) Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(87) Windshield sticker--Identifying insignia indicating that an over axle/over gross weight tolerance permit has been issued in accordance with Subchapter C of this chapter (relating to Permits for Over Axle and Over Gross Weight Tolerances) and Transportation Code, §623.011.

(88) Year--A time period consisting of 12 consecutive months that commences with the "movement to begin" date stated in the permit.

(89) 72-hour temporary vehicle registration--Temporary vehicle registration issued by the MCD authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.352.

(90) 144-hour temporary vehicle registration--Temporary vehicle registration issued by the MCD authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.352.

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 April 25, 2008.

TRD-200802175

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER B. GENERAL PERMITS

### 43 TAC §§28.11 - 28.16

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.

TRD-200802176

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

### 43 TAC §28.30

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to

establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.

TRD-200802177

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

### 43 TAC §28.64

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.

TRD-200802178

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER G. PORT OF BROWNSVILLE PORT AUTHORITY PERMITS

### 43 TAC §28.91, §28.92

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to

establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.

TRD-200802179

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER H. CHAMBERS COUNTY PERMITS

### 43 TAC §28.101, §28.102

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.

TRD-200802180

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER I. COMPLIANCE

### 43 TAC §§28.110 - 28.116

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which

authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

§28.113. *Shipper Certificate of Weight.*

(a) For a shipper's certificate of weight to be valid, the shipper must:

(1) certify that the information contained on the form used for the shipper's certificate of weight is accurate; and

(2) deliver the certificate to the motor carrier or other person transporting the shipment before:

(A) the motor carrier or person applies for an overweight permit under this chapter; or

(B) the motor carrier or person begins to transport the shipment if the motor carrier or person does not apply for an overweight permit because of the information in the certificate.

(b) A motor carrier who holds an annual envelope permit issued under this chapter may rely on the shipper's certificate of weight to determine whether the shipment requires an additional overweight permit.

(c) It is an affirmative defense to an administrative enforcement action under this chapter for the failure of a person or the holder of a permit to obtain the required overweight permit that the person relied on a valid shipper's certificate of weight.

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 April 25, 2008.

TRD-200802181

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER J. RECORDS AND INSPECTIONS

### 43 TAC §§28.200 - 28.202

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.  
TRD-200802182  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Effective date: June 1, 2008  
Proposal publication date: February 15, 2008  
For further information, please call: (512) 463-8683



## SUBCHAPTER K. ENFORCEMENT

### 43 TAC §§28.300 - 28.306

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.076(c), which

authorizes the commission to establish the fee for certain oversize or overweight permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, 623, and 643.

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 April 25, 2008.

TRD-200802183  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Effective date: June 1, 2008  
Proposal publication date: February 15, 2008  
For further information, please call: (512) 463-8683



# 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 Medical Board

### Title 22, Part 9

The Texas Medical Board proposes to review Chapter 161, General Provisions, §§161.1 - 161.13, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §161.6 and §161.8.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802104

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 163, Licensure, §§163.1, 163.2, 163.4 - 163.11 and 163.13, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§163.4 - 163.6, 163.10 and 163.11.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802105

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 166, Physician Registration, §§166.1 - 166.6, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§166.1, 166.2, 166.5, and 166.6.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802106

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 169, Authority of Physicians to Supply Drugs, §§169.1 - 169.8, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes an amendment to §169.2.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802107

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 171, Postgraduate Training Permits, §§171.1 - 171.7, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§171.3, 171.4, 171.6 and the repeal and replacement of §171.5.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802108



Donald W. Patrick, MD, JD  
Executive Director  
Texas Medical Board  
Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 172, Temporary and Limited Licenses, §§172.1 - 172.12, 172.13 and 172.15, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§172.1, 172.2, 172.3, 172.6, 172.8, and 172.13.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802109  
Donald W. Patrick, MD, JD  
Executive Director  
Texas Medical Board  
Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 184, Surgical Assistants, §§184.1 - 184.9, 184.12 - 184.21, and 184.23 - 184.26, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§184.1, 184.2, 184.4 - 184.6, 184.8, 184.9, 184.18, 184.19, 184.20, and 184.26.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802110  
Donald W. Patrick, MD, JD  
Executive Director  
Texas Medical Board  
Filed: April 22, 2008



The Texas Medical Board proposes to review Chapter 193, Standing Delegation Orders, §§193.1 - 193.12, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§193.1, 193.2, 193.4, and 193.6 - 193.10 and the repeal of §193.11.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200802111  
Donald W. Patrick, MD, JD  
Executive Director  
Texas Medical Board  
Filed: April 22, 2008



Texas Department of Public Safety

### Title 37, Part 1

Pursuant to Government Code, §2001.039, the Texas Department of Public Safety (department) files this notice of intent to review and consider for re adoption, amendment, or repeal 37 TAC Chapter 6 (License to Carry Handgun); Chapter 15 (Driver License Rules); Chapter 16 (Commercial Drivers License); Chapter 19 (Breath Alcohol Testing Regulations); Chapter 21 (Equipment and Vehicle Standards); Chapter 25 (Safety Responsibility Regulations); Chapter 28 (DNA, CODIS, Forensic Analysis, and Crime Laboratories); Chapter 29 (Practice and Procedure); Chapter 31 (Standards for an Approved Motorcycle Operator Training Course); Chapter 32 (Bicycles--Use And Safety); and Chapter 33 (All-Terrain Vehicle Operator Education and Certification Program).

The department will determine whether the reasons for adopting or re adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. Any changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to Pat Holmes, Inspector, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

TRD-200802165  
Thomas A. Davis, Jr.  
Director  
Texas Department of Public Safety  
Filed: April 24, 2008



### Adopted Rule Reviews

Texas Department of Agriculture

#### Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of Title 4, Texas Administrative Code, Part 1, Chapter 8, concerning Agricultural Hazard Communication Regulations, pursuant to the Texas Government Code, §2001.039, and re adopts all sections in Chapter 8, with amendments proposed to the chapter in the department's notice of intent to review. The notice of intent to review was published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2349). No comments were received on the proposal.

Section 2001.039 requires state agencies to review and consider for re adoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist. As part of the review process, the department proposed amendments to Chapter 8, §8.2, concerning definition, and §8.11, concerning counties in which the department will provide the training program for agricultural laborers. The proposed amendments were also published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2098). No comments were received on the proposal.

The assessment of Title 4, Texas Administrative Code, Part 1, Chapter 8, by the department at this time, indicates that, with the addition of the adopted amendments to §8.2 and §8.11, the reason for re adopting without changes all sections in Chapter 8, continues to exist.

TRD-200802191

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: April 25, 2008



The Texas Department of Agriculture (the department) adopts the review of Title 4, Texas Administrative Code, Part 1, Chapter 13, concerning Grain Warehouse, Chapter 14, concerning Perishable Commodities Handling and Marketing Program, Chapter 15, concerning Egg Law, Chapter 21, concerning Citrus, and Chapter 23, concerning Rose Grading, pursuant to the Texas Government Code, §2001.039, and readopts all sections in Chapters 13, 14, 15, 21 and 23, with amendments proposed to Chapter 23 in the department's notice of intent to review. The notice of intent to review was published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2349). No comments were received on the proposal.

Section 2001.039 requires state agencies to review and consider for re-adoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist. As part of the review process, the department proposed amendments to Chapter 23, §23.4, concerning the rose grading caliper specification chart. The proposed amendments were also published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2099). No comments were received on the proposal.

The assessment of Title 4, Texas Administrative Code, Part 1, Chapters 13, 14, 15, 21 and 23 by the department at this time indicates that, with the addition of the adopted amendments to §23.4, the reason for re-adopting without changes all sections in Chapters 13, 14, 15, 21 and 23 continues to exist.

TRD-200802192  
Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: April 25, 2008



Texas Board of Occupational Therapy Examiners

**Title 40, Part 12**

The Texas Board of Occupational Therapy Examiners adopts the review of the rules in the following chapters:

- Chapter 361. Statutory Authority
- Chapter 362. Definitions
- Chapter 363. Consumer/Licensee Information
- Chapter 364. Requirements for Licensure
- Chapter 367. Continuing Education
- Chapter 368. Open Records
- Chapter 369. Display of Licenses.
- Chapter 370. License Renewal
- Chapter 371. Inactive and Retired Status
- Chapter 372. Provision of Services
- Chapter 373. Supervision
- Chapter 374. Disciplinary Actions/Detrimental Practice/Complaint Process/Code of Ethics

Chapter 375. Fees

Chapter 376. Registration of Facilities.

The proposed review was published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 2043).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in these chapters continues to exist.

This concludes the review of agency rules, pursuant to Texas Government Code §2001.039 (Administrative Procedures Act).

TRD-200802198  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Filed: April 28, 2008



Office of the Secretary of State

**Title 1, Part 4**

The Office of the Secretary of State (the Office) has reviewed and now re-adopts 1 TAC Part 4, Chapters 71 - 76, 78 - 81, 83, 87, 91, 93, 95 - 97, 101 - 103 and 105, in accordance with the requirements of the Texas Government Code, §2001.039, which directs state agencies to review and consider for re-adoption each of their rules every four years. During this review the Office has determined that the reasons for adopting these chapters continue to exist. These chapters were proposed for review in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2351).

In 2007 the Office adopted changes and/or repealed rules for the following chapters:

- Chapter 81. Elections
- Chapter 87. Notary Public
- Chapter 95. Uniform Commercial Code
- Chapter 96. Electric Utility Transition Property Notice Filings

The Office received written comments from one individual concerning Chapter 73, Statutory Documents.

Concerning §73.3, *Organizer's Card*, the commenter suggested that the rule should delete a reference to "his seal of office" and replace this term with "the state seal". The paragraph now reads, "(5) the signature of the secretary of state, dated and attested by his seal of office." The office agrees with this comment, and intends to amend the paragraph as suggested.

Concerning §73.71, *Issuance of Commissions*, the commenter suggested the rule be amended to explain that the Secretary of State does not issue commissions to certain court officers. The comment reads as follows:

*"Since the November 6, 2001 adoption of a constitutional amendment creating Texas Constitution article V, section 5a, the clerks of the Texas Supreme Court, the Court of Criminal Appeals of Texas, and the Texas Courts of Appeals have all been constitutionally appointed state officers. My understanding, however, is that, notwithstanding section §73.71, the Secretary of State does not issue commissions to these appointed state officers, even though commissions have been issued to these appellate clerks in the past. If the Secretary of State intends to continue not issuing commissions to these appointed state officers, then the text of section §73.71 should be altered to explain that practice."*

The Office disagrees that the rule should be amended. The Secretary of State issues commissions only to gubernatorial appointees. Section 73.71 as originally adopted in 1983 does not apply to any officers who are appointed by a state official other than the governor.

Concerning §73.43, *Facsimile Transmission of a Statement of Officer Form*, the commenter said that a change he had recommended in 2003 was not adopted by formal notice and comment. Specifically, the recommendation was to change a reference from "Vernon's Annotated Texas Constitution, Article 16, §1(b)" to read "Texas Constitution, Article XVI, §1(b)".

The Office agreed with the comment in 2003 and adopted the rule with the suggested text. However, in the preamble to the adoption notice, the Office failed to mention the comment which recommended this change. The preamble stated incorrectly that no comments were received. The preamble further erred in saying that the rule was being adopted without change to the proposed text. In fact the text was changed in response to the commenter's recommendation. The text in the *Texas Administrative Code* reflects this change. The Office published a correction of error to explain that it had received the comment and neglected to address it in the preamble. The correction notice was published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2986).

The following chapters are readopted.

Chapter 71. General Policies and Procedures

Chapter 72. State Seal

Chapter 73. Statutory Documents

Chapter 74. Credit Services Organizations

Chapter 75. Automobile Club

Chapter 76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness

Chapter 78. Athlete Agents

Chapter 79. Corporations

Chapter 80. Unincorporated Business Entities

Chapter 81. Elections

Chapter 83. Limited Partnership

Chapter 87. Notary Public

Chapter 91. Texas Register

Chapter 93. Trademarks

Chapter 95. Uniform Commercial Code

Chapter 96. Electric Utility Transition Property Notice Filings

Chapter 97. Business Opportunity

Chapter 101. Practice and Procedure Before the Office of the Secretary of State

Chapter 102. Health Spas

Chapter 103. Membership Camping Resorts

Chapter 105. Solicitations

TRD-200802228

Jay Dyer

General Counsel

Office of the Secretary of State

Filed: April 28, 2008



# 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.

## Ark-Tex Council of Governments

### Request for Proposal for Provision of a Regional Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for a training provider/police academy to provide regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division (if awarded this funding).

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, and Advanced/Specialized Law Enforcement Training. The period of performance is September 1, 2008 through August 31, 2009.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Patricia Haley, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is May 23, 2008, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-200802275  
L.D. Williamson  
Executive Director  
Ark-Tex Council of Governments  
Filed: April 30, 2008

## Office of the Attorney General

### Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in Harris County, Texas and the Texas Commission on Environmental Quality v. Gladys Conner, William Barnett and Gerre Thornhill; Cause No. 2007-34020, 125th Judicial District, Harris County, Texas.

Background: This suit alleges violations of rules promulgated under the Texas Solid Waste Disposal Act resulting from illegal storage of

solid waste on property in Harris County, Texas. The Defendants are Gladys Conner and William Barnett. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs.

Nature of Settlement: The settlement awards \$100,000.00 in civil penalties, \$96,000.00 of which will be deferred subject to Defendants disposing of the solid waste on the property within 365 days from the date the judgment is signed by the Court. The settlement awards \$500.00 in attorney's fees to the State and \$500.00 in attorney's fees to Harris County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

*For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 463-2096.*

TRD-200802210  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 28, 2008

## Chambers County

### Request for Comments and Proposals

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners' Court of a county with no more than two (2) nursing facilities certified to participate in the state Medicaid program to request that the Texas Department of Aging and Disability Services ("DADS") contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Chambers County Commissioners' Court is considering requesting that the DADS contract for more Medicaid nursing facility beds in Chambers County. The Commissioners' Court is soliciting comments on whether the request should be made. Further, the Commissioners' Court seeks proposals from persons interested in providing additional Medicaid beds in Chambers County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals should be submitted to County Judge Jimmy Sylvia, Chambers County Courthouse, 2nd floor, south entrance, 404 Washington Avenue, Anahuac, Texas 77514, before 5:00 p.m. CST on May 12, 2008.

TRD-200802188

Jimmy Sylvia  
County Judge  
Chambers County  
Filed: April 25, 2008

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 18, 2008, through April 24, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 30, 2008. The public comment period for this project will close at 5:00 p.m. on May 30, 2008.

#### FEDERAL AGENCY ACTIONS:

**Applicant: NuStar Energy, LLP;** Location: The project is located in State Tracts 707, 708, 710, and 723 in Nueces Bay, approximately 2.5 miles west of Phillips Channel's intersection with Rincon Canal, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 655390; Northing: 3080923. Project Description: The applicant proposes to install, operate and maintain a 22,404-foot-long by 12.75-inch-diameter petroleum products pipeline across Nueces Bay by directional drilling and trenching. Approximately 8,800 feet of the line, 2 feet wide by 8,800 feet long by 4 feet deep, and covering approximately 17,600 square feet, would be jetted or plowed a minimum distance of 3 feet below the bay bottom. Up to 5 feet of bottom (88,000 square feet) on either side of the trench would be temporarily affected. Approximately 13,317 feet of pipeline would be bored onto shore (5,317-foot bore at the north end and 8,000-foot bore at the south end). A portion of the southern bore would cross beneath U.S. Army Corps of Engineers (Corps) Placement Area No. 1. At each bore exit point, a temporary trench (approximately 12 feet wide by 400 feet long by 6 feet deep with 1V:3H side slopes for a 48-foot maximum top width) covering approximately 19,200 square feet would be constructed to complete the bore tie-in. Up to 25 feet on either side of the trenches (20,000 square feet) would be temporarily affected. In the area to be trenched, NuStar would install turbidity curtains to protect any oyster reef within 500 feet of the pipeline. No wetlands, seagrass, or oysters would be impacted. CCC Project No.: 08-0123-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00223 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency determination for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Oiltanking Houston, LP;** Location: The project is located on the Houston Ship Channel, at 15631 Jacintoport Boulevard, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates

in NAD 27 (meters): Zone 15; Easting: 294223; Northing: 3291389. Project Description: The applicant proposes to demolish existing docks and dolphins, construct two new docks, mooring and breasting dolphins, and mechanically and/or hydraulically dredge 510,000 cubic yards of material to provide docking areas. The dredge material will be placed in the Glanville Dredge Material Placement Area (DMPA). CCC Project No.: 08-0125-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00073 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200802268

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: April 30, 2008

## 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 05/05/08 - 05/11/08 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 05/05/08 - 05/11/08 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-200802227

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 28, 2008

## Texas Department of Criminal Justice

### Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Department of Criminal Justice announces the following notice of contract award for Consulting Services to improve Historically Underutilized Business (HUB) participation.

The Notice of Request for Proposals, 696-BF-8-P002, was published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8594).

The contract was awarded to:

Rz & Associates, Inc.

1400 Smith Road  
Austin, Texas 78748

The total amount of the contract is \$32,000.00

The term of the contract is April 22, 2008, through October 22, 2008. The consultant will furnish a comprehensive report two weeks prior to completion of this contract.

TRD-200802185  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: April 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 **June 9, 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 June 9, 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: Noe Alaniz; DOCKET NUMBER: 2008-0535-WOC-E; IDENTIFIER: RN103471256; LOCATION: Combes, Cameron County, Texas; TYPE OF FACILITY: operator licensing; RULE VIOLATED: 30 Texas Administrative Code (TAC) §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5427, (956) 425-6010.

(2) COMPANY: ALI GULLU CORPORATION dba Four Star Citgo 4; DOCKET NUMBER: 2007-2034-PST-E; IDENTIFIER: RN101556736; LOCATION: White Settlement, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and

(c)(5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; 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; and 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records onsite at the station; PENALTY: \$2,310; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Allco, Inc.; DOCKET NUMBER: 2008-0226-WQ-E; IDENTIFIER: RN105373047; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$2,700; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: City of Austin; DOCKET NUMBER: 2008-0121-WQ-E; IDENTIFIER: RN102077328; LOCATION: Travis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012971001, Permit Conditions 2.g., and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into waters in the state; and 30 TAC §317.3(e)(5), by failing to provide adequate emergency provisions for a lift station; PENALTY: \$16,250; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(5) COMPANY: Victor Ballas; DOCKET NUMBER: 2007-1742-PST-E; IDENTIFIER: RN101552339; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: inactive USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs; and 30 TAC §334.7(a)(1), by failing to register with the commission, on authorized commission forms, any USTs in existence on or after September 1, 1987; PENALTY: \$8,925; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Bells; DOCKET NUMBER: 2007-2032-MLM-E; IDENTIFIER: RN101920809; LOCATION: Grayson County, Texas; TYPE OF FACILITY: wastewater treatment and collection system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010126001, Permit Conditions Number 2.g., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010126001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations for flow; PENALTY: \$13,750; Supplemental Environmental Project (SEP) offset amount of \$11,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Donnie Earl Bristow; DOCKET NUMBER: 2008-0573-WOC-E; IDENTIFIER: RN103707386; LOCATION: Jones County, Texas; TYPE OF FACILITY: operator licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDI-

NATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: City of Bynum; DOCKET NUMBER: 2008-0045-MWD-E; IDENTIFIER: RN101612943; LOCATION: Bynum, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011542001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids (TSS) and five-day biochemical oxygen demand (BOD<sub>5</sub>); PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: C W & A, Inc.; DOCKET NUMBER: 2007-2028-PST-E; IDENTIFIER: RN101443075; LOCATION: Victoria, Victoria County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 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: \$4,800; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Citgo Refining and Chemicals Company L.P.; DOCKET NUMBER: 2007-1853-AIR-E; IDENTIFIER: RN100238799; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Numbers 8778A and PSD-TX-408M3, Special Condition (SC) One, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event; PENALTY: \$2,425; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Roger Collins; DOCKET NUMBER: 2008-0101-IHW-E; IDENTIFIER: RN105362859; LOCATION: Chilton, Falls County, Texas; TYPE OF FACILITY: cattle feeding operation; RULE VIOLATED: 30 TAC §335.4(2), by failing to prevent the disposal of industrial solid waste; PENALTY: \$920; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: City of Denton; DOCKET NUMBER: 2008-0284-AIR-E; IDENTIFIER: RN102212685; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and THSC, §382.085(b), by failing to submit the annual permit compliance certification; and 30 TAC §205.6 and the Code, §5.702, by failing to pay general storm water permit fees; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store; DOCKET NUMBER: 2007-1991-AIR-E; IDENTIFIER: RN100816123; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: vehicle washing and gasoline dispensing business; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: \$2,400; EN-

FORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(14) COMPANY: Environmental Processing Systems, L.C.; DOCKET NUMBER: 2007-2015-UIC-E; IDENTIFIER: RN102316817; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: underground injection control class 1 commercial non-hazardous waste disposal well; RULE VIOLATED: 30 TAC §331.64(c) and §331.67(a)(1)(B) and WDW-316 Operating Provisions VII-A and IX, by failing to install an adequate annulus monitoring system, to maintain continuous records indicating annulus volume monitoring, and by failing to record injection parameters continuously; 30 TAC §331.63(f) and WDW-316 Operating Provisions VII-A and IX, by failing to use a standard flow meter which can be adequately tested and calibrated quarterly for accuracy; 30 TAC §331.63(d) and WDW-316 Operating Provisions VII-A and IX, by failing to ensure that the annulus is completely filled with a fluid meeting industry standards; and 30 TAC §331.65(b)(2) and §331.67(a)(4) and WDW-316 Operating Provision X, by failing to record operational problems on the self-reporting form; PENALTY: \$70,150; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Gainesville; DOCKET NUMBER: 2008-0089-WQ-E; IDENTIFIER: RN101918050; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: collection system manholes; RULE VIOLATED: the Code, §26.121(a)(1) and TPDES Permit Number WQ0010726001, Permit Conditions Number 2, g., by failing to prevent the unauthorized discharge of untreated wastewater; and 30 TAC §21.4 and the Code, §5.702 and §26.0135(h), by failing to pay the consolidated water quality assessment fee and associated late fee; PENALTY: \$6,050; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Gutierrez Oil Company dba La Bodega 1; DOCKET NUMBER: 2008-0536-PST-E; IDENTIFIER: RN105440978; LOCATION: Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; and 30 TAC §334.8(c), by failing to submit initial/renewal UST registration and self-certification form; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Harris County Municipal Utility District 250; DOCKET NUMBER: 2008-0253-MWD-E; IDENTIFIER: RN101513687; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §6.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$11,160; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: HICKS OIL & BUTANE COMPANY; DOCKET NUMBER: 2007-2012-PST-E; IDENTIFIER: RN102958287; LOCATION: Lyford, Willacy County, Texas; TYPE OF FACILITY: two inactive USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs; PENALTY: \$5,500; ENFORCEMENT COORDINATOR: Shontay Wilcher; REGIONAL

OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: City of Houston; DOCKET NUMBER: 2007-1984-MWD-E; IDENTIFIER: RN101607596; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010495111, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with its permitted effluent limits for TSS, ammonia-nitrogen (NH<sub>3</sub>N, and BOD<sub>5</sub>); and the Code, §5.702 and §26.358(f), by failing to pay the aboveground storage tank late fees; PENALTY: \$7,250; SEP offset amount of \$5,800 applied to Armand Bayou Nature Center Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Kempner Water Supply Corporation; DOCKET NUMBER: 2008-0128-PWS-E; IDENTIFIER: RN101197549; LOCATION: Kempner, Lampasas County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(2), by failing to maintain an accurate and up-to-date map of the distribution system; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(q) and §290.122(a)(2), by failing to institute all necessary special precautions, including issuing a boil water notice to the customers; and 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain the disinfectant residual concentration throughout the distribution system; PENALTY: \$1,523; SEP offset amount of \$1,219 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Lattimore Materials Company, L.P.; DOCKET NUMBER: 2008-0021-IWD-E; IDENTIFIER: RN101741163; LOCATION: Collin County, Texas; TYPE OF FACILITY: ready-mix concrete plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110120, Part III, Permit Requirements, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$4,350; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Adam D. Lopez, Jr.; DOCKET NUMBER: 2008-0574-WOC-E; IDENTIFIER: RN105422992; LOCATION: Ranger, Eastland County, Texas; TYPE OF FACILITY: operator licensing; 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: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(23) COMPANY: Randal Paul Manus; DOCKET NUMBER: 2008-0073-WOC-E; IDENTIFIER: RN103617379; LOCATION: Tarrant County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a) and §30.381(b), the Code, §37.003, and THSC, §341.034, by failing to obtain a valid public water system operator license; PENALTY: \$570; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: McMullen County Water Control & Improvement District Number 1; DOCKET NUMBER: 2007-2037-MLM-E; IDENTIFIER: RN101398261; LOCATION: Tilden, McMullen County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 30 TAC §290.121(b), by failing to maintain a copy of the current monitoring plan at the water system's treatment plant; 30 TAC §290.39(j)(1)(A) and THSC, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation in enclosures where chlorine gas is stored or fed; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence with lockable gates; 30 TAC §290.46(f)(4) and §290.46(f)(3)(B)(v), by failing to provide all requested water system operating records to commission personnel at the time of the investigation; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite; 30 TAC §290.46(m), by failing to initiate maintenance housekeeping practices to ensure good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.43(c)(6) and §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.43(c)(1), by failing to equip ground storage tank number 3 with a roof vent in accordance with American Water Works Association (AWWA) standards; 30 TAC §290.43(c)(3), by failing to provide an overflow that is designed in strict accordance with current AWWA design standards; 30 TAC §290.46(m)(1)(A), by failing to conduct annual inspections of the three ground storage tanks; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the water system's pressure tank; 30 TAC §290.46(t), by failing to post a legible sign that contains the name of the water supply and emergency telephone numbers; 30 TAC §290.110(e)(4), by failing to prepare and submit a disinfectant level quarterly operating report; and 30 TAC §288.20(a) and §288.30(5)(B), by failing to provide a copy of an adopted drought contingency plan; PENALTY: \$3,687; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2008-0112-MWD-E; IDENTIFIER: RN102287125; LOCATION: Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011506001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for pH, total NH<sub>3</sub>N, total chlorine residual, and BOD<sub>5</sub>; PENALTY: \$8,610; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(26) COMPANY: Postmus Dairy, L.L.C. dba Postmus Dairy; DOCKET NUMBER: 2007-1976-AGR-E; IDENTIFIER: RN102334836; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.36(l), by failing to properly dispose of dead animals; 30 TAC §321.36(c) and TPDES General Permit Number TXG920299 Part V, Standard Permit Condition D, by failing to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure litter and process water including runoff; 30 TAC §321.40(d) and the Code, §26.121(a), by failing to contain a discharge from a land management unit; and 30 TAC §321.36(h)(2), by failing to conduct weekly inspections and document/record the pond levels; PENALTY: \$7,200; ENFORCEMENT COORDINATOR: Cheryl Thompson,



(817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Prism Gas Systems I, L.P.; DOCKET NUMBER: 2008-0058-AIR-E; IDENTIFIER: RN102558939; LOCATION: Waskom, Harrison County, Texas; TYPE OF FACILITY: gas processing plant; RULE VIOLATED: 30 TAC §111.111(a)(4)(A), Air Permit 32829, and THSC, §382.085(b), by failing to prevent five excess opacity events; and 30 TAC §101.201(e) and THSC, §382.085(b), by failing to meet the minimum reporting requirements for four excess opacity events; PENALTY: \$10,320; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(28) COMPANY: PYCO Industries, Inc.; DOCKET NUMBER: 2008-0240-AIR-E; IDENTIFIER: RN100213693; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: cotton seed oil mill; RULE VIOLATED: 30 TAC §122.146(2) and Operating Permit Number O-01075 General Terms and Conditions, by failing to timely submit the permit compliance certification; and 40 CFR §63.2861(a) and Operating Permit Number O-01075, Special Terms and Conditions Number 5, by failing to submit the annual compliance certification; PENALTY: \$5,775; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(29) COMPANY: Riviera Water Control and Improvement District; DOCKET NUMBER: 2008-0004-MWD-E; IDENTIFIER: RN105377535; LOCATION: Kleberg County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013374002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(30) COMPANY: City of San Angelo; DOCKET NUMBER: 2007-1766-WQ-E; IDENTIFIER: RN102296654; LOCATION: Tom Green County, Texas; TYPE OF FACILITY: collection system with manholes; RULE VIOLATED: 30 TAC §305.125(9) and Permit Number WQ0010641003, Monitoring Requirements Numbers 7.a and b, by failing to report an unauthorized discharge in writing within five working days of becoming aware of the noncompliance; and 30 TAC §305.125(4), Permit Number WQ0010641003, Permit Conditions Numbers 2.d and g, and the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater and by failing to take all reasonable steps to minimize a discharge; PENALTY: \$17,120; SEP offset amount of \$17,120 applied to Keep Texas Beautiful; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(31) COMPANY: City of San Augustine; DOCKET NUMBER: 2007-1407-MWD-E; IDENTIFIER: RN103137949; LOCATION: San Augustine County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010268001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for dissolved oxygen, NH<sub>3</sub>N, flow, and chlorine residual; PENALTY: \$5,200; SEP offset amount of \$4,160 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: City of Seminole; DOCKET NUMBER: 2007-1059-MWD-E; IDENTIFIER: RN102077955; LOCATION: Gaines County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010278001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits for BOD<sub>5</sub> and chlorine residual; PENALTY: \$4,560; SEP offset amount of \$3,648 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(33) COMPANY: Shumard Corporation dba Associated Fiberglass Enterprises; DOCKET NUMBER: 2007-1946-AIR-E; IDENTIFIER: RN101340818; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: fiberglass items manufacturing operation; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 4830, SC Number 5, and THSC, §382.085(b), by failing to comply with the acetone annual usage limit of four tons per year; 30 TAC §116.115(c), Permit Number 4830, SC Number 9, and THSC, §382.085(b), by failing to conduct trimming and grinding operations; 30 TAC §122.145(2)(B) and (C) and THSC, §382.085(b), by failing to timely submit the required deviation report; 30 TAC §122.146(1) and (2) and THSC, §382.085(b), by failing to timely submit the required annual compliance certification; 30 TAC §122.142(a), Federal Operating Permit Number O-02785, Special Terms and Conditions Number 2.A.(iii)2, and THSC, §382.085(b), by failing to maintain a record of quarterly visible emissions; 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit annual emissions inventory questionnaires; and 30 TAC §101.20(2), Permit Number 4830, SC Number 3, 40 CFR §§63.10(b)(3), 63.5810, 63.5910(a), (b)(1), (2), and (4), and 63.9(b)(2) and (h), and THSC, §382.085(b), by failing to submit initial notification, maintain records to demonstrate compliance, submit first and second semiannual compliance reports, submit notification of compliance status for operations demonstrating compliance based on a 12-month rolling average; PENALTY: \$29,375; SEP offset amount of \$11,750 applied to City of Fort Worth - "Mow Down Air Pollution" lawn mower exchange event; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Southwest Convenience Stores, LLC; DOCKET NUMBER: 2007-1957-AIR-E; IDENTIFIER: RN102048592, RN100824010, RN102396702, RN102390028, RN102395274, RN102394756, RN102398112, RN102399094, RN102393980, RN102391331, RN102204195, RN102383965, RN105204283; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: \$20,230; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(35) COMPANY: West Houston Airport Corporation; DOCKET NUMBER: 2007-1726-MWD-E; IDENTIFIER: RN102096633; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number 12516001, Sludge Provisions, by failing to submit the annual sludge report; 30 TAC §305.125(1) and (5) and §317.3(b)(1), and TPDES Permit 12516001, Operational Requirements Number 1, by failing to adequately maintain the facility to prevent interruption of service and ensure adequate containment and treatment of wastewater; 30 TAC §305.125(1) and (5) and §317.4(g)(4)(B), and TPDES

Permit 12516001, Operational Requirements Number 1, by failing to adequately maintain the facility to prevent interruption of service and ensure adequate containment and treatment of wastewater; and 30 TAC §305.125(1) and (5) and TPDES Permit Number 12516001, Operational Requirements Number 1, by failing to properly operate and maintain the facility to ensure compliance with permitted effluent limits; 30 TAC §317.6(b)(3), by failing to provide a chlorine contact basin with adequate disinfection capacity; 30 TAC §305.125(1) and (5) and §319.11(d), and TPDES Permit 12516001, Operational Requirements Number 1, by failing to maintain a staff gauge to monitor and report instantaneous flow measurements; and 30 TAC §305.125(1), TPDES Permit Number 12516001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to maintain compliance with the permit effluent limits for NH<sub>3</sub>-N, total chlorine residual, and dissolved oxygen; 30 TAC §305.125(1) and (5), and TPDES Permit Number 12516001, Operational Requirements Number 1, by failing to prevent the spill of a dechlorinating agent from a plastic storage tank to the adjacent ground; 30 TAC §§305.125(1), 319.7(c), and 319.9 and TPDES Permit Number 12516001, Monitoring and Reporting Requirements Number 3.b., by failing to provide the operations logs, field analyses records, and quality control records for the field analyses for review upon request; 30 TAC §305.125(1) and §319.7(e) and TPDES Permit Number 12516001, Monitoring and Reporting Requirements Number 1, by failing to fill out the discharge monitoring reports (DMRs) correctly; 30 TAC §305.125(1) and §319.7(d) and TPDES Permit Number 12516001, Monitoring and Reporting Requirements Number 1, by failing to submit the DMRs; 30 TAC §305.125(1) and §319.7(d) and TPDES Permit Number 12516001, Monitoring and Reporting Requirements Number 1, by failing to timely submit DMRs; and 30 TAC §305.125(1) and TPDES Permit Number 12516001, Monitoring and Reporting Requirements Number 7.c., by failing to submit non-compliance notification reports for the NH<sub>3</sub>-N violations; PENALTY: \$26,520; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200802233

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 29, 2008



#### Enforcement Orders

An agreed order was entered regarding Mohammad A. Ghene dba Super Food Mart 12, Docket No. 2005-0023-PST-E on April 16, 2008 assessing \$14,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hinas Lodging Company dba Budget Inn Express, Docket No. 2005-1718-PWS-E on April 16, 2008 assessing \$2,840 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.

A default order was entered regarding Lowell Johnson dba Cason Country Store, Docket No. 2006-0206-PST-E on April 16, 2008 assessing \$1,050 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 City of San Angelo, Docket No. 2006-0656-MSW-E on April 16, 2008 assessing \$1,380 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.

A default order was entered regarding Houston Precast, Inc., Docket No. 2006-0836-AIR-E on April 16, 2008 assessing \$30,000 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 City of Harlingen, Docket No. 2006-1974-MLM-E on April 16, 2008 assessing \$22,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James 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 Randolph Water Supply Corporation, Docket No. 2007-0179-MWD-E on April 16, 2008 assessing \$41,410 in administrative penalties with \$29,659 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Palmer, Docket No. 2007-0283-MWD-E on April 16, 2008 assessing \$26,390 in administrative penalties with \$5,278 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roel Stoker dba Ned Tex Dairy, Docket No. 2007-0513-AGR-E on April 16, 2008 assessing \$1,860 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of West Tawakoni, Docket No. 2007-0535-PWS-E on April 16, 2008 assessing \$12,725 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.

A default order was entered regarding Shoukat Hussain dba Speedee Mart, Docket No. 2007-0571-PST-E on April 16, 2008 assessing \$5,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Armando Alvarez, Docket No. 2007-0642-MSW-E on April 16, 2008 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Taylorcraft Aviation, L.L.C., Docket No. 2007-0673-IHW-E on April 16, 2008 assessing \$8,400 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 E. I. du Pont de Nemours and Company, Docket No. 2007-0760-AIR-E on April 16, 2008 assessing \$77,860 in administrative penalties with \$15,572 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sour Lake, Docket No. 2007-0779-PWS-E on April 16, 2008 assessing \$104 in administrative penalties with \$20 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 278, Docket No. 2007-0913-MWD-E on April 16, 2008 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Troy Brown, Docket No. 2007-0982-PST-E on April 16, 2008 assessing \$8,925 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.

A default order was entered regarding Daryl Major, Docket No. 2007-1041-MLM-E on April 16, 2008 assessing \$8,500 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 City of Strawn, Docket No. 2007-1060-MWD-E on April 16, 2008 assessing \$7,080 in administrative penalties with \$1,416 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jayton, Docket No. 2007-1086-PWS-E on April 16, 2008 assessing \$3,121 in administrative penalties with \$624 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Neches Food Store, Docket No. 2007-1122-PST-E on April 16, 2008 assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip DeFrancesco, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals, LP, Docket No. 2007-1141-AIR-E on April 16, 2008 assessing \$33,250 in administrative penalties with \$6,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cities of Waco, Woodway, Bellmead, Lacy Lakeview, Robinson and Hewitt, Docket No. 2007-1174-MWD-E on April 16, 2008 assessing \$54,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC dba 7-Eleven, Docket No. 2007-1181-AIR-E on April 16, 2008 assessing \$21,240 in administrative penalties with \$4,248 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 Texas Department of Transportation, Docket No. 2007-1311-PWS-E on April 16, 2008 assessing \$1,450 in administrative penalties with \$290 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blackland Water Supply Corporation, Docket No. 2007-1382-PWS-E on April 16, 2008 assessing \$3,142 in administrative penalties with \$628 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 San Antonio Water System, Docket No. 2007-1393-PST-E on April 16, 2008 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hale Center, Docket No. 2007-1402-PWS-E on April 16, 2008 assessing \$2,599 in administrative penalties with \$519 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Louisiana-Pacific Corporation, Docket No. 2007-1422-AIR-E on April 16, 2008 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, 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. 2007-1425-AIR-E on April 16, 2008 assessing \$17,697 in administrative penalties with \$3,539 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 Targa North Texas LP, Docket No. 2007-1431-AIR-E on April 16, 2008 assessing \$37,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Corpus Christi, Docket No. 2007-1436-MWD-E on April 16, 2008 assessing \$42,810 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, 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 City of Southside Place, Docket No. 2007-1440-PWS-E on April 16, 2008 assessing \$2,571 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pinehurst, Docket No. 2007-1444-MWD-E on April 16, 2008 assessing \$15,717 in administrative penalties with \$3,143 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas H2O Inc., Docket No. 2007-1454-PWS-E on April 16, 2008 assessing \$2,730 in administrative penalties with \$546 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viridis Energy (Texas), LP, Docket No. 2007-1470-AIR-E on April 16, 2008 assessing \$7,455 in administrative penalties with \$1,491 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 Equistar Chemicals, LP, Docket No. 2007-1471-AIR-E on April 16, 2008 assessing \$7,125 in administrative penalties with \$1,425 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 Pelican Refining Company LLC, Docket No. 2007-1487-AIR-E on April 16, 2008 assessing \$9,120 in administrative penalties with \$1,824 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 Weirich Bros., Inc., Docket No. 2007-1489-AIR-E on April 16, 2008 assessing \$1,320 in administrative penalties with \$264 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ONEOK Hydrocarbon Southwest, LLC, Docket No. 2007-1490-AIR-E on April 16, 2008 assessing \$2,808 in administrative penalties with \$561 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diocese of Galveston Houston, Docket No. 2007-1499-MWD-E on April 16, 2008 assessing \$11,626 in administrative penalties with \$2,325 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 Dallas Area Rapid Transit dba DART East Dallas Support Services Overhaul Shop, Docket No. 2007-1501-PST-E on April 16, 2008 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tatum, Docket No. 2007-1516-PWS-E on April 16, 2008 assessing \$2,343 in administrative penalties with \$468 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Scurry-Rosser Independent School District, Docket No. 2007-1532-MWD-E on April 16, 2008 assessing \$6,200 in administrative penalties with \$1,240 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 Amigo's Fuel Center, L.P., Docket No. 2007-1533-MLM-E on April 16, 2008 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Z Q Inc. dba Max Mart, Docket No. 2007-1535-PST-E on April 16, 2008 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip DeFrancesco, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clara Hills Civic Association, Docket No. 2007-1537-PWS-E on April 16, 2008 assessing \$342 in administrative penalties with \$68 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hamilton, Docket No. 2007-1540-PWS-E on April 16, 2008 assessing \$4,687 in administrative penalties with \$937 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 R. A. Bagwell Oil Company, Inc., Docket No. 2007-1555-IWD-E on April 16, 2008 assessing \$9,850 in administrative penalties with \$1,970 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 Barney M. Davis, LP, Docket No. 2007-1570-AIR-E on April 16, 2008 assessing \$2,470 in administrative penalties with \$494 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 Marina Bello dba Bello's Komer Store, Docket No. 2007-1571-PST-E on April 16, 2008 assessing \$5,000 in administrative penalties with \$1,000 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 BP Amoco Chemical Company, Docket No. 2007-1574-AIR-E on April 16, 2008 assessing \$6,875 in administrative penalties with \$1,375 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Jameson, LP, Docket No. 2007-1576-AIR-E on April 16, 2008 assessing \$970 in administrative penalties with \$194 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arbor Care, Inc., Docket No. 2007-1583-MSW-E on April 16, 2008 assessing \$4,415 in administrative penalties with \$883 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Restaurant Service, L.L.C., Docket No. 2007-1614-MWD-E on April 16, 2008 assessing \$8,960 in administrative penalties with \$1,792 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 City of Gregory, Docket No. 2007-1627-PWS-E on April 16, 2008 assessing \$165 in administrative penalties with \$33 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Trinidad, Docket No. 2007-1629-MWD-E on April 16, 2008 assessing \$8,520 in administrative penalties with \$1,704 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, 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 Jesus Martinez dba Ideal Landscapes, Docket No. 2007-1647-LII-E on April 16, 2008 assessing \$625 in administrative penalties with \$125 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 City of Gorman, Docket No. 2007-1683-MWD-E on April 16, 2008 assessing \$5,022 in administrative penalties with \$1,004 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 Aus-Tex Parts & Services, Ltd., Docket No. 2007-1710-MWD-E on April 16, 2008 assessing \$7,000 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Redwater, Docket No. 2007-1723-MWD-E on April 16, 2008 assessing \$3,100 in administrative penalties with \$620 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, 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 Lumberton Municipal Utilities District, Docket No. 2007-1727-PWS-E on April 16, 2008 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxy Vinyls, LP, Docket No. 2007-1731-AIR-E on April 16, 2008 assessing \$3,275 in administrative penalties with \$655 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Cogeneration LP, Docket No. 2007-1737-AIR-E on April 16, 2008 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port Terminal Railroad Association, Docket No. 2007-1746-MWD-E on April 16, 2008 assessing \$2,840 in administrative penalties with \$568 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 Petrolia, Docket No. 2007-1794-PWS-E on April 16, 2008 assessing \$605 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Doggett Heavy Machinery Services, Ltd., Docket No. 2007-1922-PST-E on April 16, 2008 assessing \$2,625 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 ICON Builders, L.L.C., Docket No. 2007-1916-WQ-E on April 16, 2008 assessing \$700 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 Weekley Homes, L.P., Docket No. 2007-1969-WQ-E on April 16, 2008 assessing \$700 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 Hamsho, Inc., Docket No. 2005-1287-PST-E on April 9, 2008 assessing \$35,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200802278

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 30, 2008



#### Notice of Availability of the Draft April 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 April 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, designated management agency information and total maximum daily load (TMDL) updates.

A copy of the draft April 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 June 9, 2008. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at [mvignali@tceq.state.tx.us](mailto:mvignali@tceq.state.tx.us).

TRD-200802230

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 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 **June 9, 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 June 9, 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: Advantage Asphalt Products, Ltd.; DOCKET NUMBER: 2007-0548-WQ-E; TCEQ ID NUMBER: RN104416722; LOCATION: 4241 County Road 22, Claude, Armstrong County, Texas; TYPE OF FACILITY: sand and gravel mining operation; RULES VIOLATED: 30 TAC §305.125(1) and Multi-Sector Industrial General Permit (MSGP) Number TXR05R233, Part III, Section A(4)(c)(1) - (12), by failing to adequately develop a site map that meets the requirements of the MSGP as documented on June 26 and July 11, 2006 and March 9, 2007; 30 TAC §305.125(1) and MSGP Number TXR05R233, Part III, Sections A(5), (5)(c), and (5)(e), and A(6)(a), by failing to develop and implement erosion control measures and Best Management Practices to reduce the discharge or potential discharge of pollutants in storm water as documented on June 26 and July 11, 2006 and March 9, 2007; 30 TAC §305.125(1) and MSGP Number TXR05R233, Part III, Section A(6)(a), by failing to design and describe adequate structural controls in the Storm Water Pollution Prevention Plan (SWP3)

as documented on June 26 and July 11, 2006 and March 9, 2007; and 30 TAC §305.125(1) and MSGP Number TXR05R233, Part III, Section A(5)(d), by failing to include a section within the SWP3 regarding a maintenance program for storm water structural controls as documented on June 26 and July 11, 2006 and March 9, 2007; PENALTY: \$2,205; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: American Golf Corporation and Wynnwood Peninsula Golf, LLC; DOCKET NUMBER: 2005-2084-MWD-E; TCEQ ID NUMBER: RN104402714; LOCATION: 1000 Boyd Road, The Colony, Denton County, Texas; TYPE OF FACILITY: unauthorized on-site sewage facility; RULES VIOLATED: 30 TAC §305.42(a) and Texas Water Code (TWC), §26.121, by failing to obtain proper authorization for the treatment and disposal of wastewater; PENALTY: \$2,200; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Hubbard; DOCKET NUMBER: 2007-0104-PWS-E; TCEQ ID NUMBER: RN101178465; LOCATION: 220 South Magnolia Avenue, Hubbard, Hill County, Texas; TYPE OF FACILITY: public water supply (PWS) system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 150 feet of well number 1; 30 TAC §290.44(h)(4), by failing to have backflow prevention assemblies tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or pressure tank capacity of 20 gallons per connection; and 30 TAC §290.45(f)(3), by failing to secure a water purchase contract that establishes the maximum rate at which water may be drafted on a daily or hourly basis or a uniform purchase rate for the contract period; PENALTY: \$715; Supplemental Environmental Project (SEP) offset amount of \$715 applied to Texas Association of Resource Conservation & Development Areas, Inc. Water or Wastewater Assistance; STAFF ATTORNEY: Mary E. Coleman, Litigation Division MC R-4, (817) 588-5917; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Consolidated Construction Recycling Services, Ltd.; DOCKET NUMBER: 2007-1090-MSW-E; TCEQ ID NUMBER: RN104949839; LOCATION: 1629 Parker Road, Carrollton, Denton County, Texas; TYPE OF FACILITY: construction recycling service facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of unprocessed construction and demolition debris including lumber pallets, wood scraps, and other material at an unauthorized facility; PENALTY: \$15,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Gulf Coast Composite Marine Specialist Inc.; DOCKET NUMBER: 2007-1424-AIR-E; TCEQ ID NUMBER: RN100887306; LOCATION: 2301 Anders Lane, Kemah, Galveston County, Texas; TYPE OF FACILITY: boat refinishing operation; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(a) and §382.0518(a), by failing to obtain permit authorization as documented on June 6, 2007; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; PENALTY: \$3,300; SEP offset amount of \$1,650 applied to Houston-Galveston Area

Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation; DOCKET NUMBER: 2007-1753-MSW-E; TCEQ ID NUMBER: RN103719795; LOCATION: 7070 Hudson Cemetery, Kennedale, Tarrant County, Texas; TYPE OF FACILITY: sand, gravel, and mulching operation; RULES VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent for recycling operations within 90 days prior to the commencement of operations; 30 TAC §328.5(c), by failing to submit a written closure cost estimate to the TCEQ; 30 TAC §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials (brush, tree trimmings, clean lumber, and mulch) outdoors; 30 TAC §328.5(f), by failing to maintain records; 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan; and 30 TAC §328.4(b)(3), by failing to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period; PENALTY: \$8,942; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Joey Sisca; DOCKET NUMBER: 2005-1114-LII-E; TCEQ ID NUMBER: RN104574389; LOCATIONS: 3306 Parliament Cove and 21106 Ridgeview Road, Lago Vista, Travis County, Texas; TYPE OF FACILITIES: landscape irrigations systems; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigators license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the connection of such system to any water supply; 30 TAC §30.5(b), by failing to possess an irrigator license before advertising or representing to the public that he could perform services for which a license was required without holding such a license or employing an individual who held a current license; and 30 TAC §334.58(b) and §30.5(b), by failing as an individual to refrain from using or attempting to use the license of someone else who is a licensed irrigator licensed installer and to possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license; PENALTY: \$4,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2007-1218-AIR-E; TCEQ ID NUMBER: RN100211879; LOCATION: 5900 Highway 225, Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §116.115(c), THSC, §382.085(b), and Air Permit Number 9334, Special Condition Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the TCEQ when the actual benzene emission exceeded the estimate provided in the initial shutdown notification by more than the reportable quantity (Incident Number 87494); and 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 3173, Special Condition Number 1, by failing to prevent unauthorized emissions; PENALTY: \$31,540; SEP offset amount of \$15,770 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Programs; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional

Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Trudy J. Gillem dba Country Villa Mobile Home Park; DOCKET NUMBER: 2005-0201-PWS-E; TCEQ ID NUMBER: RN101441764; LOCATION: north side of Highway 202, approximately three miles east of Beeville, Beeville County, Texas; TYPE OF FACILITY: mobile home park with a PWS; RULES VIOLATED: 30 TAC §290.46(e) and Agreed Order Number 2000-0422-PWS-E, Ordering Provision 2.a., by failing to operate the system under the direct supervision of a competent water works operator holding a Grade "D" or higher operator's license; 30 TAC §290.45(b)(1)(F)(iii) and Agreed Order Number 2000-0422-PWS-E, Ordering Provision 2.g., by failing to provide two or more service pumps with a total rate capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(F)(iv) and Agreed Order Number 2000-0422-PWS-E, Ordering Provision 2.g., by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(3)(N) and Agreed Order Number 2000-0422-PWS-E, Ordering Provision 2.b.ii., by failing to provide a flow meter on the well pump discharge line; 30 TAC §290.110(d)(1)(C) (formerly 30 TAC §290.110(d)(3)(C)(ii)), by failing to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a N,N-diethyl-p-phenylenediamine indicator; 30 TAC §290.46(f)(3)(A) and (B)(iii), by failing to keep on file and make available for commission review a record of operations for the previous two years and disinfectant residual monitoring results from the distribution system for the previous three years; 30 TAC §290.46(m)(1), by failing to inspect the pressure tank and ground storage tank at least annually; 30 TAC §290.43(c)(4), by failing to equip the ground storage tank with a water level indicator located at the tank site; TWC, §7.101, by failing to comply with Ordering Provisions 2.a. through 2.d. and 2.f. through 2.g. from TCEQ Administrative Order Docket Number 2000-0422-PWS-E; and 30 TAC §290.51(a)(3), TWC, §5.702, and Agreed Order Number 2000-0422-PWS-E, Ordering Provision 2.b.iv., by failing to pay all public health service fees (Account Number 90130058) for calendar years 1996-2005; PENALTY: \$3,906; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200802231

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 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 **June 9, 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, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 9, 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: Ahmad Kassira and Kamal Kassira dba Sandy's Food Mart; DOCKET NUMBER: 2006-0048-PST-E; TCEQ ID NUMBER: RN102045739; LOCATION: 2740 Sandy Lane, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.8(c)(4)(B) and Texas Water Code (TWC), §26.346(a), by failing to ensure that the UST and Registration Self-Certification Form is fully and accurately completed and that it is submitted to the agency in a timely manner; 30 TAC §334.46(d)(4)(B) and TWC, §26.3475, by failing to perform a cathodic test after installation for a steel/fiberglass reinforced plastic composite tank or for a steel tank within a bonded fiberglass reinforced plastic external cladding to ensure that the steel tank shell remained electrically isolated from the surrounding soil, backfill, groundwater, and other metal components; 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as a motor fuel each operating day; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases at a frequency of at least once every month (not to exceed 35 days between monitoring); 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §334.48(c), by failing to conduct inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to ensure that an application for renewal of a delivery certificate is properly and timely filed; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for Fiscal Year 2005 as recorded in TCEQ Financial Account Number 0055906U; and TCEQ Default Order, Docket Number 2000-0178-PST-E, Ordering Provision Number 1, effective July 23, 2001, by failing to pay the \$2,500 administrative penalty; PENALTY: \$22,425; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth

Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Dhanani Investment Inc. dba Saveway Food Market; DOCKET NUMBER: 2007-1739-PST-E; TCEQ ID NUMBER: RN100871300; LOCATION: 13501 South Post Oak Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(1)(C) and Texas Health and Safety Code (THSC), §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.8(c)(5)(B)(ii), by failing to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$4,600; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Evans Weaver; DOCKET NUMBER: 2007-0393-LII-E; TCEQ ID NUMBER: RN104787213; LOCATION: 4819 G Capitol of Texas Highway, Austin, Travis County, Texas; TYPE OF FACILITY: landscape business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold a current TCEQ irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the connection of such system to any water supply; PENALTY: \$625; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Faridabano Gaffar dba Comet Cleaners; DOCKET NUMBER: 2006-0837-DCL-E; TCEQ ID NUMBER: RN100708338; LOCATION: 5739 Crowley Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station; PENALTY: \$1,185; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Gloria Serenil; DOCKET NUMBER: 2007-1503-PST-E; TCEQ ID NUMBER: RN101890721; LOCATION: 1405 Highway 181 North, Normanna, Bee County, Texas; TYPE OF FACILITY: property with three inactive USTs; RULES VIOLATED: 30 TAC §334.7(d)(1)(A), by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$16,800; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Jesus Marroquin; DOCKET NUMBER: 2007-0301-MSW-E; TCEQ ID NUMBER: RN105109128; LOCATION: on the

west side of Western Road, approximately 0.25 miles north of the intersection of Western Road and Farm-to-Market Road 1924, near Mission, Hidalgo County, Texas; TYPE OF FACILITY: abandoned sand and gravel pit; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$5,000; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Johnny Williams dba Mesujo Services dba Mesujo South; DOCKET NUMBER: 2004-1066-WQ-E; TCEQ ID NUMBER: RN104316112; LOCATION: 1706 Wald Road, New Braunfels, Comal County, Texas; TYPE OF FACILITY: a mine of nonmetallic minerals; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or a Texas Pollutant Discharge Elimination System Multi-Sector General Permit; PENALTY: \$40,000; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Mohammad Rafiul Habib dba South Buckner Food Mart; DOCKET NUMBER: 2004-1655-PST-E; TCEQ ID NUMBER: RN101543494; LOCATION: 521 South Buckner Boulevard, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$1,130; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Nazneen Dhanani dba Coldspring Food Store; DOCKET NUMBER: 2004-0488-PST-E; TCEQ ID NUMBER: RN102276334; LOCATION: State Highway 150 West, approximately one half mile west of Coldspring, San Jacinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.10(b)(1)(B) and §334.49(e)(2)(B)(ii), by failing to maintain and make immediately available upon request by TCEQ personnel, the results of all tests and inspections of the adequacy of the cathodic protection system; 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to successfully test the line leak detector on the regular unleaded line for performance and operational reliability at least once per year; and 30 TAC §334.22, by failing to pay outstanding UST fees for TCEQ Financial Account Number 0053532U for Fiscal Years 2003-2004; PENALTY: \$16,275; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200802232

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 29, 2008



Notice of Water Quality Applications

The following notices were issued during the period of April 9, 2008 through April 24, 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

CITY OF ANSON has applied for a major amendment to Permit No. WQ0010500002 to authorize an increase in the daily average flow from 275,000 gallons per day to 340,000 gallons per day and to increase the acreage irrigated from 58 acres to 91 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 4,500 feet east northeast of the intersection of U.S. Highway 83 and U.S. Highway 180 in Jones County, Texas.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0012122001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located on the south side of Carpenters Bayou, approximately 3/4 mile southeast of Carpenters Bayou's crossing of Interstate Highway 10 in Harris County, Texas.

CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. WQ0010395007, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 3030 Ferry Road approximately 2,250 feet south of the intersection of Ferry Road and Massey Thompkins Road in Harris County, Texas.

BOSQUE POWER COMPANY, LLC which operates Bosque County Power Plant, a combined cycle electric generating station, has applied for a major amendment to TPDES Permit No. WQ0004167000 to authorize an increase in the daily average flow volume at Outfall 001 from a volume not to exceed 1,800,000 gallons per day to a volume not to exceed 5,480,000 gallons per day; an increase in the daily maximum flow at Outfall 001 from a volume not to exceed 2,700,000 gallons per day to a volume not to exceed 8,320,000 gallons per day; to authorize the relocation of Outfall 001 from a discharge point into an unnamed tributary to a discharge point directly into the Brazos River Below Lake Whitney; and the additional discharge of low volume waste on an intermittent and flow variable basis via new internal Outfall 102. The current permit authorizes the discharge of cooling tower blowdown, evaporative cooling system blowdown, previously monitored effluents (PME), and storm water at a daily average flow not to exceed 1,800,000 gallons per day via Outfall 001; and low volume waste sources and metal cleaning wastes on an intermittent and flow variable basis via Outfall 101. The facility is located at Bosque County Road 3610, #557, approximately one mile east of the intersection of Bosque County Road 3610 and Farm-to-Market Road 56, and approximately 0.75 miles downstream of the Whitney Lake Dam, Bosque County, Texas.

CEDAR BAYOU PARK UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011713001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at the Southern Pacific Railroad crossing of McGee Gully, approximately 5,000 feet south of Interstate Highway 10 and approximately 5,000 feet southeast of the intersection of Interstate Highway 10 and Sjolander Road in Harris County, Texas.

EXXONMOBIL REFINING & SUPPLY COMPANY which operates the ExxonMobil Baytown Complex, an integrated petroleum refinery

and organic chemical manufacturing facility, which receives compatible wastes from an adjacent sulfuric acid manufacturing plant, has applied for a major amendment to TPDES Permit No. WQ0000592000 to authorize an increase in effluent limits via Outfall 001; recalculate the single grab effluent limits at Outfall 001; reduce various sampling frequencies at Outfall 001; define hydrostatic test water, gray water (from hand washing areas), and periodic construction storm water as facility wastewaters to be treated and discharged via Outfalls 001 and 002; revise the Other Requirement minimum analytical levels; add an Other Requirement to address pond algae or plant control procedures; remove the biomonitoring requirement at Outfall 002 or revise the composite biomonitoring sampling requirement to a single grab sampling requirement at Outfall 002; authorize the treatment and discharge of similar wastewaters from non-adjacent ExxonMobil affiliates; revise the definition of the 10-year, 24-hour precipitation event; and remove the daily average flow reporting requirement from Outfalls 102 and 002. The current permit authorizes the discharge of facility wastewater (process wastewater, storm water, groundwater, cooling tower blowdown, steam condensate, domestic wastewater, ballast water, firewater, silt settling pond water, and regenerate from a demineralizer plant) at a daily average flow not to exceed 33,000,000 gallons per day via Outfall 001; the discharge of previously monitored effluents (PMEs include process wastewater, storm water, groundwater, cooling tower blowdown, steam condensate, ballast water, firewater, silt pond settling water, and regenerate water from a demineralizer plant) on an intermittent and flow variable basis via Outfall 002; and the discharge of regenerate water from a demineralizer plant at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 003. The facility is located at 2800 Decker Drive, adjacent to the Houston Ship Channel, in the City of Baytown, Harris 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.

CITY OF LADONIA has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0014673001 to authorize the creation of an interim phase with a reduced flow not to exceed 250,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 530,000 gallons per day. The facility is located approximately 900 feet west of State Highway 50 and approximately 700 feet south of the intersection of State Highway 50 and Farm-to-Market Road 2456 in Fannin County, Texas.

CITY OF PASADENA has applied for a renewal of TPDES Permit No. WQ0010053003 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located approximately 100 yards south of Spencer Highway and adjacent to the west edge of Denkman Road in Harris County, Texas.

PASADENA REFINING SYSTEM, INC which operates the Pasadena Refinery, has applied for a renewal of TPDES Permit No. WQ0000574000, which authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001; and storm water and hydrostatic test water on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located at 111 Red Bluff Road, immediately northeast of the intersection of Red Bluff Road and South Shaver Street, as well as immediately southeast of the intersection of Red Bluff Road and State Highway 225, in the City of Pasadena, Harris County, Texas.

QUADVEST, L.P. has applied for a renewal of TPDES Permit No. WQ0014542001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per

day. The facility is located approximately 500 feet south-southwest of the intersection of Magnolia Industrial Boulevard and Farm-to-Market Road 1774 in Montgomery County, Texas.

RAYFORD CROSSING, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014862001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day. The facility is located at 29321 South Plum Creek Road, approximately 0.9 mile south of the intersection of Rayford Road and Geneva Road, in Montgomery County, Texas.

SOUTHWEST SHIPYARD, L.P. which operates Southwest Shipyard, has applied for a major amendment to TPDES Permit No. WQ0002605000 to authorize an increase in ammonia-nitrogen, phenols, and nickel limitations at Outfall 001 and an increase in total suspended solids at Outfalls 003, 004 and 005. The current permit authorizes a discharge of treated: barge wash waters, third-party biotreatable wastewater, groundwater remediation project wastewater, domestic wastewater, utility wastewaters (vacuum tower cooling water, boiler blowdown), steam condensate, barge ballast water, reverse osmosis wastewater, fresh water filter backwash, and contaminated storm water runoff via Outfall 001 at a daily average flow not to exceed 175,000 gallons per day; treated dry dock runoff and storm water runoff on an intermittent and flow variable basis via Outfalls 003, 004, and 005; and clean barge ballast water on an intermittent and flow variable basis via Outfall 006. The facility is located at 18310 Market Street in the city of Channelview, Harris County, Texas.

TERRA RENEWAL SERVICES, INC. has applied for Permit No. WQ0004830000 to authorize the land application of sewage sludge for beneficial use on 326.9 acres. The proposed land application site would be located adjacent to the east side of Farm-to-Market Road 2276, extending from approximately 300 feet north of the intersection of Farm-to-Market Road 2276 and Farm-to-Market Road 2204, northward to approximately 600 feet south of the intersection of Farm-to-Market Road 2276 and Farm-to-Market Road 349, approximately 1.5 miles east of the City of Kilgore in Gregg County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION which operates the Texas Department of Transportation Municipal Separate Storm Sewer System (MS4), has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment of NPDES Permit No. TXS000402 to add authorization of discharges from portions of the MS4 located within additional areas of Hays, Travis, and Williamson counties not currently covered by the existing permit. The current permit authorizes storm water point source discharges to surface water in the state from the Texas Department of Transportation MS4. This permit will be issued as TPDES Permit No. WQ0004645000. The MS4 is located within right-of-ways owned and operated by the Texas Department of Transportation located within the corporate boundary and the five mile extra-territorial jurisdiction (ETJ) of the City of Austin, within all right-of-ways located outside of the corporate boundary of the City of Austin but within the recharge zone of the Barton Springs portion of the Edwards Aquifer in Hays, Travis, and Williamson Counties, Texas, and within right-of-ways that are located within incorporated or unincorporated portions of the urbanized areas of Hays, Travis, and Williamson Counties, Texas.

WILDWOOD PROPERTY OWNERS ASSOCIATION has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011184001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located at the corner of Balsawood and Chestnut Streets in the community of Wildwood, approximately 0.25 mile south of Lake Kimble and approxi-

mately 2.5 miles west of the intersection of U.S. Highways 69 and 287 and Farm-to-Market Road 3063 in Hardin County, Texas.

CITY OF WILLIS has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010315001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located 200 yards west of the U.S. Highway 75 crossing of the East Fork of Crystal Creek and approximately 2 miles south of the City of Willis in Montgomery County, Texas.

#### Concentrated Animal Feeding Operation

The following require the applicants to publish notice in a newspaper. Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

Consideration of the application by HORIZON DAIRY for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003672000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 3,600 head, of which 3,000 head are milking cows and to increase land management unit acreage from 775 acres to 884 acres. The facility is located on the north side of Farm-to-Market Road 219 approximately 3.5 miles east of the intersection of U.S. Highway 281 and Farm-to-Market Road 219, said intersection is approximately 12 miles north of the city of Hamilton in Hamilton 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-200802276

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 30, 2008



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 22, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, *Petitioner v. Clarence A. Reeves dba Pleasant Ridge Addition dba Timber Creek Addition*; SOAH Docket No. 582-08-1716; TCEQ Docket No. 2005-1860-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Clarence A. Reeves dba Pleasant Ridge Addition dba Timber Creek Addition on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200802279

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 30, 2008



#### Revised Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment

For the Period of April 16, 2008.

APPLICATION. Ruffino Hills Transfer Station, L.P., c/o Fort Bend County Regional Landfill, 14115 Davis Estates Road, Needville, Fort Bend County, Texas 77461, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to the permit for Ruffino Hills Transfer Station, an existing Type V municipal solid waste transfer station, to increase the maximum daily waste rate from 850 tons/day to 2,000 tons/day and to revise the hours of operation. The facility is located at 9720 Ruffino Road, Houston, Harris County, Texas. The TCEQ received the application on March 14, 2008. The permit application is available for viewing and copying at the Houston Public Library, Frank Neighborhood Branch, 6440 West Bellfort Street, Houston, Harris County, Texas.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court. TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; pro-

vide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about 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 from Ruffino Hills Transfer Station, L.P. at the address stated above or by calling Mr. B. Jeffery Hobby at (713) 988-4274.

TRD-200802277

LaDonna Castañuela  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: April 30, 2008

## Texas Facilities Commission

### Request for Proposals #303-8-10491-A

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney (OAG), announces the issuance of Request for Proposals (RFP) #303-8-10491-A. TFC seeks a 5 or 10 year lease of approximately 11,233 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is May 16, 2008 and the deadline for proposals is May 23, 2008 at 3:00 p.m. The award date is July 16, 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 an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting 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=76237](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76237).

TRD-200802169

Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: April 25, 2008

## Texas Health and Human Services Commission

### Correction to Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) published a public notice regarding the proposed Medicaid payment rates for eight laboratory procedure codes associated with the 2008 Healthcare Common Procedure Coding System (HCPCS) update in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3681). The notice included an incorrect telephone number, incorrect description of the procedure codes as being associated with the First Quarter 2008 HCPCS update rather than the annual 2008 HCPCS update, and incorrect proposed retroactive effective date of April 1, 2008, rather than January 1, 2008. The rate hearing is still scheduled for May 19, 2008. The correct notice should be as follows:

The Texas Health and Human Services Commission will conduct a public hearing on May 19, 2008 at 1:30 p.m. to receive public comment on proposed Medicaid rates for eight laboratory procedure codes associated with the annual 2008 Healthcare Common Procedure Coding System (HCPCS) update. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** These procedure codes were added as new benefits under the Texas Medicaid Program in the January 2008 HCPCS Special Bulletin, No. 213. The proposed payment rates for the new eight laboratory procedure codes associated with the annual 2008 HCPCS update include seven clinical laboratory procedure codes and one nonclinical laboratory procedure and are proposed to be effective retroactively to January 1, 2008.

**Methodology and Justification.** The proposed payment rates for the clinical laboratory procedure codes are calculated in accordance with 1 TAC §355.8610, relating to Reimbursement for Clinical Laboratory Services. The proposed payment for the one nonclinical laboratory procedure code is calculated in accordance with 1 TAC §355.8081, which includes the reimbursement methodology for laboratory services.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after May 5, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400,

Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 by May 14, 2008, so appropriate arrangements can be made.

TRD-200802234

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 29, 2008



### Correction to Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) published a public notice regarding the proposed Medicaid payment rates for 23 procedure codes associated with the 2008 Healthcare Common Procedure Coding System (HCPCS) update in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3680). The notice included an incorrect telephone number, an incorrect description of HCPCS, and an incorrect reference to the first quarter HCPCS update rather than second quarter HCPCS update. The rate hearing is still scheduled for May 19, 2008. The correct notice should be as follows:

The Texas Health and Human Services Commission will conduct a public hearing on May 19, 2008 at 1:30 p.m. to receive public comment on proposed Medicaid rates for 23 procedure codes associated with 2008 Healthcare Common Procedure Coding System (HCPCS) updates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for 22 procedure codes associated with the 2008 HCPCS annual update include 14 physician-administered drugs procedure codes, three expendable medical supplies procedure codes, and five durable medical equipment (DME) procedure codes and are proposed to be effective retroactively to January 1, 2008. The proposed payment rate for one procedure code associated with the second quarter 2008 HCPCS update includes one DME procedure code and is proposed to be effective retroactively to April 1, 2008.

**Methodology and Justification.** The proposed payment rates for the physician-administered drugs procedure codes are calculated in accordance with 1 TAC §355.8085, relating to the Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners and the specific fee guidelines published in Section 2.2.1.2 of the 2008 Texas Medicaid Provider Procedures Manual. The proposed payment rates for the expendable medical supplies procedure codes are calculated in accordance with 1 TAC §355.8021(b), relating to the Reimbursement Methodology for Home Health Services, and 1 TAC §355.8441(2), relating to the Reimbursement Methodologies for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Services. The proposed payment rates for the DME procedure codes are calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for DME as a home health service and 1 TAC §355.8441(3), relating to the reimbursement methodology for DME under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program, which is known as the Texas Health Steps Program or THSteps.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after May 5, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 by May 14, 2008, so appropriate arrangements can be made.

TRD-200802235

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 29, 2008



## Department of State Health Services

### Notice of Public Meeting

The Department of State Health Services (department) will hold a public meeting to accept public comments on the proposed rules to amend 25 Texas Administrative Code, Chapter 97, Subchapter B, §97.61 and §§97.63 - 97.72. The proposed rules are undergoing a required four-year review of rules pursuant to Government Code, §2001.039, and are scheduled for presentation at the June 2008 State Health Services Council meeting.

The public meeting will begin at 1:00 p.m. on Monday, May 12, 2008, in K-100 (Lecture Hall) located at the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. Comment time for each individual will be determined by the total number of persons registered to speak.

To view the proposed changes, please visit the department's Immunization Branch website at the following link: <http://www.dshs.state.tx.us/immunize/rulechange.shtm#public>.

The following is a highlight of proposed revisions to the rules for school and child-care facility immunization requirements.

#### **Meningococcal Vaccine.\***

-Beginning School Year (SY) 2009 - 2010, 7th grade requirement.

#### **Varicella Vaccine.**

-Beginning SY 2009 - 2010, 2 dose requirement for kindergarten and 7th grade entry.

#### **Tdap Vaccine.**

-Beginning SY 2009 - 2010, a booster dose requirement for Tdap for 7th grade.

#### **MMR Vaccine.**

-Beginning SY 2009 - 2010, 2 dose requirement of MMR vaccine for kindergarten entry.

#### **Hepatitis A Vaccine.**

-Beginning SY 2009 - 2010, 2 dose requirement for kindergarten entry statewide.

**General revisions** are incorporated that clarify or simplify language throughout the rules relating to the school and child care requirements.

#### **\*Additional information on Meningococcal Vaccine.**

**\*Meningococcal School Vaccine Requirement Requested.** Department rules that specify immunization requirements for school entry are currently undergoing the required four-year review. Stakeholders, including the Texas Medical Association, the Texas Pediatric Society, school nurses, and the Meningitis Angels (an advocacy group) have requested that the department add a middle school entry requirement for meningococcal vaccine to proposed rules for adolescents. Since the rules are open for review, this is an appropriate time to consider this requirement.

**\*Impact of Meningococcal Disease.** The Centers for Disease Control and Prevention (CDC) estimates 1,400 - 2,800 cases of meningococcal disease occur in the United States annually. Transmission is from person to person through direct contact with nose and throat secretions. An infected person can transmit the disease by coughing or sneezing directly into the face of others, kissing a person on the mouth, or sharing a glass or cup. Of those diagnosed with meningococcal disease, 10 to 14 percent die. Eleven to 19 percent of survivors have life-long disabilities such as neurological disability, limb loss, or hearing loss. This disease is communicable, sometimes debilitating and fatal. However, it is preventable and an effective vaccine is recommended by the CDC and the Advisory Committee on Immunization Practices (ACIP).

**\*Meningococcal Vaccine Availability and Cost.** In January 2005, a new meningococcal vaccine (MCV4) was licensed for use among individuals ages 11 - 55 years. In June 2007, the recommendation was revised to include routine vaccination of all persons 11 - 18 years of age with one MCV4 dose at the 11 and 12 year old healthcare visit. (Most 11 and 12 year olds are in 7th grade.) The vaccine is currently \$68 per dose and is a one-dose series.

Further information may be obtained from Tim Hawkins, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 3394 or (800) 292-9152, or electronic mail at Tim.Hawkins@dshs.state.tx.us.

TRD-200802269

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: April 30, 2008

## **Texas Department of Housing and Community Affairs**

Request for Proposal for State of Texas Balance of State Continuum of Care

### **I. Background and Purpose of Balance of State Continuum of Care (CoC) Project**

During the 80th Regular Texas Legislative Session, the Legislature appropriated funds for the 2008 and 2009 biennium for the Texas Department of Housing and Community Affairs (the Department or TDHCA) to support the State's effort to assist rural communities in their efforts

to access federal Continuum of Care funds. The funds will be used to provide technical assistance to rural homeless coalitions and other entities considering applying under the State's Balance of State CoC Application to be submitted to the U.S. Department of Housing and Urban Development. The Balance of State areas in Texas include 182 counties, as identified in the Request for Proposals (RFP).

The Department intends to outsource this contract for delivery of the technical assistance and will do so through a Request for Proposals process. The Department will accept proposals from vendors meeting the requirements of the RFP to provide funding to support the delivery of training and technical assistance to units of local government, homeless coalitions or non-profit organizations, that are located in Balance of State areas, applying as an applicant under the State's Balance of State CoC Application for Continuum of Care funds through the U.S. Department of Housing and Urban Development.

### **II. Request for Proposals**

The Department is seeking proposals to provide training and technical assistance to units of local government, homeless coalitions or non-profit organizations, in Balance of State areas, applying for Continuum of Care funds through the U.S. Department of Housing and Urban Development (HUD). TDHCA will contract with an entity to provide the training and technical assistance to interested organizations in the Balance of State areas. The purpose of the training and technical assistance will be to assist units of local government, homeless coalitions or non-profit organizations, in Balance of State areas, to successfully compete for HUD CoC funds.

The locations of the training and technical assistance will be contingent on the requests of interested parties. Entities receiving technical assistance from the successful respondent must be located in a Balance of State area.

### **III. Request for Proposal Qualifications**

Vendors responding to this RFP must meet the qualifications of the RFP.

Vendor will provide technical assistance to the coalition responsible for developing and applying under the State's Balance of State CoC Application to be submitted to HUD. Technical assistance will include, but not be limited to, guidance on application requirements to apply for HUD CoC funding, the State's requirement for inclusion in the State's Balance of State CoC Application, limited research assistance, guidance on the development of a system to address the specific needs of each homeless subpopulation including those experiencing chronic homelessness, veterans, persons with serious mental illness, persons with substance abuse issues, persons with HIV/AIDS, persons with co-occurring diagnoses, victims of domestic violence, youth, and any others. Technical assistance will also include guidance on how to conduct homeless counts/surveys, guidance on conducting an inventory of housing and services for homeless families and individuals, guidance on the development of a coordinated effort to fill gaps between the current inventory of services and existing needs, guidance on the prioritization of projects, and on final work leading to submission of CoC application. During the final phase of technical assistance, the vendor is to conduct a review of the draft application and provide pointers to the applicants on revising the application to improve its competitiveness.

The vendor will need to demonstrate the ability to tailor training and technical assistance to the needs of interested parties, as the interested party experience applying for HUD CoC funding will vary widely.

The vendor will be responsible for coordinating its technical assistance personnel's hotel and travel arrangements, providing technical assis-

tance materials, and providing for any audio/visual needs. These items should be considered when preparing the budget.

A report of the training and technical assistance services rendered must be submitted to TDHCA on a monthly basis using a prescribed reporting format.

The vendor will be paid on a reimbursement basis. Payment will be made within 30 calendar days of the completion of each technical assistance session performed in accordance with the contract upon conclusion of the technical assistance and submission of required reports.

#### IV. Contract Period

The Department anticipates entering into a 12 month contract, beginning August 1, 2008 through approximately July 31, 2009. All projects should be planned for a maximum of 12 months. However, the Department may consider renewing the contract for an additional 12 months if performance requirements are met.

The RFP will be posted on the Department's web-site <http://www.tdhca.state.tx.us> and organizations on the Department's ESGP interested party list and the Department's list serve will receive an e-mail notification that the RFP is available on the Department's web-site.

**Deadline for Receipt: Monday, June 2, 2008 by 5:00 p.m. CST**

#### Mailing Address:

Julie M. Dumbeck  
Manager of Purchasing/Staff Services  
Texas Department of Housing and Community Affairs  
Post Office Box 13941  
Austin, Texas 78711-3941  
(All U.S. Postal Service including Express)

#### Courier Delivery:

Texas Department of Housing and Community Affairs  
221 East 11th Street, 1st Floor  
Austin, Texas 78701  
(FedEx, UPS, Overnight, etc.)

**Hand Delivery:** If you are hand delivering the Proposal, contact Julie M. Dumbeck at (512) 475-3991 or Sue Jaeger at (512) 475-3984 when you arrive at the lobby of our building for Proposal acceptance.

**Questions** pertaining to the content of this proposal packet may only be directed to Julie M. Dumbeck at email address [julie.dumbeck@tdhca.state.tx.us](mailto:julie.dumbeck@tdhca.state.tx.us) or by phone at (512) 475-3991.

TRD-200802264  
Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 29, 2008

### Texas Department of Insurance

#### Company Licensing

Application to change the name of MANULIFE INSURANCE COMPANY to JOHN HANCOCK LIFE & HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Boston, Massachusetts.

Application for incorporation to the State of Texas by CHAMP FRA-  
TERNAL BENEFIT SOCIETY, a domestic life, accident and/or health  
company. The home office is in San Antonio, Texas.

Application for admission to the State of Texas by HOUSING ENTER-  
PRISE INSURANCE COMPANY, INC., a foreign fire and/or casualty  
company. The home office is in South Burlington, Vermont.

Application for admission to the State of Texas by COASTAL CASU-  
ALTY INSURANCE COMPANY, a foreign fire and/or casualty com-  
pany. The home office is in Goldsboro, North Carolina.

Application for admission to the State of Texas by FIRST MERCURY  
CASUALTY COMPANY, a foreign fire and/or casualty company. The  
home office is in Southfield, Michigan.

Any objections must be filed with the Texas Department of Insurance,  
within twenty (20) calendar days from the date of the *Texas Regis-  
ter* publication, addressed to the attention of Godwin Ohaechesi, 333  
Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200802272  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 30, 2008

### Texas Lottery Commission

#### Instant Game Number 1041 "Magnificent Millions"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1041 is "MAGNIFICENT MIL-  
LIONS". The play style is "key number match".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1041 shall be \$20.00 per ticket.

##### 1.2 Definitions in Instant Game No. 1041.

A. Display Printing - That area of the instant game ticket outside of the  
area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play  
Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the  
instant ticket that is used to determine eligibility for a prize. Each Play  
Symbol is printed in Symbol font in black ink in positive except for  
dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5,  
6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,  
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$20.00,  
\$25.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$400, \$1,000 and SONE  
MILL PLAY SYMBOL.

D. Play Symbol Caption - The printed material appearing below each  
Play Symbol which explains the Play Symbol. One caption appears  
under each Play Symbol and is printed in caption font in black ink  
in positive. The Play Symbol Caption which corresponds with and  
verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1041 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND

\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$ONE MILL PLAY SYMBOL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$100, \$200 or \$400.

H. High-Tier Prize - A prize of \$1,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1041), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 25 within each pack. The format will be: 1041-0000001-001.

K. Pack - A pack of "MAGNIFICENT MILLIONS" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAGNIFICENT MILLIONS" Instant Game No. 1041 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAGNIFICENT MILLIONS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and \$20).

E. No four or more matching non-winning prize symbols on a ticket.

F. The top prize will appear on every ticket unless otherwise restricted.

G. Non-winning prize symbols will not match winning prize symbols on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MAGNIFICENT MILLIONS" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$40.00, \$50.00, \$100, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAGNIFICENT MILLIONS" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "MAGNIFICENT MILLIONS" top level prize of \$1,000,000 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. As an alternative method of claiming a "MAGNIFICENT MILLIONS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. 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.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MAGNIFICENT MILLIONS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MAGNIFICENT MILLIONS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military person-

nel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled

to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1041. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1041 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	489,600	8.33
\$30	367,200	11.11
\$40	244,800	16.67
\$50	163,200	25.00
\$100	37,400	109.09
\$200	17,850	228.57
\$400	2,890	1,411.76
\$1,000	1,530	2,666.67
\$1,000,000	10	408,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.08. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1041 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1041, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802170  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 25, 2008



Instant Game Number 1049 "Aztec Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1049 is "AZTEC GOLD". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1049 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1049.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41,

42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1049 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	

47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	
91	
92	
93	
94	
95	

96	
97	
98	
99	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$40.00, 50.00, \$60.00, \$75.00, \$100, \$150, \$300 or \$500.

H. High-Tier Prize - A prize of \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1049), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1049-0000001-001.

K. Pack - A pack of "AZTEC GOLD" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "AZTEC GOLD" Instant Game No. 1049 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "AZTEC GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 96 (ninety-six) Play Symbols. A player must scratch the YOUR NUMBERS play symbols to reveal 30 (thirty) numbers. Then the player must scratch ONLY the numbers in each GAME that exactly match YOUR NUMBERS play symbols. If the player matches all the numbers on the same horizontal line within a GAME, the player wins the prize amount shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 96 (ninety-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 96 (ninety-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 96 (ninety-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 96 (ninety-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and



19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. There will be many near wins in both games. A near win is all grid symbols marked within a game's row less one.

C. All thirty YOUR NUMBERS play symbols will appear in either GAME 1 or GAME 2.

D. No duplicate YOUR NUMBERS play symbols on a ticket.

E. No duplicate GAME 1 and GAME 2 play symbols on a ticket.

F. The ninety-nine play symbols will be randomly distributed in the YOUR NUMBERS play area.

G. The ninety-nine play symbols will be randomly distributed in both games.

H. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "AZTEC GOLD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$40.00, \$50.00, \$60.00, \$75.00, \$100, \$150, \$300 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$40.00, \$50.00, \$60.00, \$75.00, \$100, \$150, \$300 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "AZTEC GOLD" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "AZTEC GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "AZTEC GOLD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "AZTEC GOLD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1049. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1049 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	391,680	10.42
\$5	261,120	15.63
\$10	146,880	27.78
\$15	97,920	41.67
\$20	32,640	125.00
\$30	13,600	300.00
\$40	6,800	600.00
\$50	5,100	800.00
\$60	3,400	1,200.00
\$75	2,414	1,690.14
\$100	1,700	2,400.00
\$150	680	6,000.00
\$300	340	12,000.00
\$500	136	30,000.00
\$3,000	22	185,454.55
\$30,000	6	680,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.23. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1049 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1049, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802171  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 25, 2008



Instant Game Number 1075 "Instant Cash Five"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1075 is "INSTANT CASH FIVE". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1075 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1075.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 5X, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$1,000 and FREE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1

Figure 1: GAME NO. 1075 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
5X SYMBOL	WINX5
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
FREE SYMBOL	TICKET

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits

of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, CASH FIVE \$1 TKT, \$2.00, \$4.00, \$5.00 or \$10.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1075), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1075-0000001-001.

K. Pack - A pack of "INSTANT CASH FIVE" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INSTANT CASH FIVE" Instant Game No. 1075 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "INSTANT CASH FIVE" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "5X" play symbol, the player wins 5 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols.

C. No duplicate non-winning prize symbols.

D. The "5X" multiplier symbol will only appear once on intended winning tickets as dictated by the prize structure.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT CASH FIVE" Instant Game prize of \$1.00, CASH FIVE \$1 TKT, \$2.00, \$4.00, \$5.00, \$10.00, \$25.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT CASH FIVE" Instant Game prize of \$1,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT CASH FIVE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "INSTANT CASH FIVE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "INSTANT CASH FIVE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1075. The approximate number and value of prizes in the game are as follows:

Figure 2

Figure 2: GAME NO. 1075 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	761,600	10.71
CASH FIVE \$1 TKT	1,360,000	6.00
\$2	707,200	11.54
\$4	108,800	75.00
\$5	81,600	100.00
\$10	54,400	150.00
\$25	27,200	300.00
\$50	4,896	1,666.67
\$100	2,380	3,428.57
\$1,000	170	48,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1075 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1075, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802172  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 25, 2008

R. Michael Eastland  
 Executive Director  
 North Central Texas Council of Governments  
 Filed: April 30, 2008

◆ ◆ ◆  
**University of North Texas System**

Notice of Request for Information for Outside Legal Services  
 Related to Intellectual Property Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas (UNT) in intellectual property matters. This Request for Information (RFI) is issued to establish (for the time frame beginning September 1, 2008 to August 31, 2009) a referral list from which the UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

**Description:** The UNT System comprises one health institution and two academic institutions located in three cities in Texas. Research activities and other educational pursuits at UNT produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, UNT will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries; advise and/or prepare material transfer agreements, license agreements and other related agreements; and advise on complex matters relating to intellectual property and technology transfer. Subject to obtaining permission from the OAG to pursue litigation in regard to a specific matter, UNT also may engage outside counsel from time to time to pursue

◆ ◆ ◆  
**North Central Texas Council of Governments**

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1185). The selected consultant will perform technical and professional work to develop a Transit Oriented Development (TOD) Plan in and around the Trinity Railway Express (TRE) Station.

The consultant selected for this project is URS Corporation, 307 W. 7th Street, Suite 1105, Fort Worth, Texas 76102. The maximum amount of this contract is \$125,000.

TRD-200802274

litigation against infringers of these intellectual property rights and to handle other related matters. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

**Responses; Qualifications:** Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in intellectual property-related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the names, experience, and scientific or technical expertise of the attorneys and patent agents who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and patent agent who may be assigned to perform services in relation to UNT's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, UNT, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNT and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of UNT, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with UNT is subject to approval by the Texas OAG. UNT reserves the right to accept or reject any or all responses submitted. UNT is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

**Format and Person to Contact:** Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Michelle Williams, Associate General Counsel, University of North Texas System, P.O. Box 310907, Denton, TX, 76203-0907; or email Michelle.Williams@unt.edu or fax to (940) 369-7026.

**Deadline for Submission of Response:** All responses must be received at the address set forth above no later than 5:00 p.m., June 20, 2008. Questions regarding this request may be directed to Michelle Williams at (940) 565-4118.

TRD-200802273

Joey Saxon

Director of Purchasing and Payment Services

University of North Texas System

Filed: April 30, 2008

◆ ◆ ◆  
**Texas Board of Nursing**

## Pilot Disciplinary Matrix

The Texas Board of Nursing (BON) approved a Pilot Disciplinary Matrix on April 18, 2008, at its quarterly board meeting. House Bill 2426 amended the Nursing Practice Act (Texas Occupations Code Chapter 301) to include §301.4531 related to Licensing and Regulatory Functions. Section 301.4531 provides in part for the board to "adopt a schedule of the disciplinary sanctions that the board may impose under this chapter." (See Texas Occupations Code §301.4531(a)). Further, that "the board shall ensure that the severity of the sanction is appropriate to the type of violation or conduct that is the basis for disciplinary action." id. The statutory requirement appears to be the result of Sunset's recommendation no. 7.6 as outlined in its December 2006 Decision Material.

At the July 19-20, 2008, Board meeting the Board proposed the adoption of amendments to 22 TAC §213.33 which outlined a schedule of sanctions. The amendments to §213.33 were approved and recommended for adoption by the Eligibility and Disciplinary Task Force on July 13, 2007.

The amended rule was published in the *Texas Register* on August 17, 2007 (32 TexReg 5143) for a 30-day comment period. The rule was published in *Texas Register* on October 5, 2007 (32 TexReg 7058) as adopted and became effective on October 10, 2007.

It should be noted, however, that Recommendation 7.6 of the Sunset Commission Decision Material repeatedly used the term "enforcement matrix," rather than "schedule of sanctions" that was adopted by the legislature.

Recommendation 7.6 provides in part:

Require the Board adopt an enforcement matrix in rule.

This recommendation would require the Board to establish, in rule, a matrix to use when determining disciplinary actions for nurses who have violated state law or Board rules. Adopting an enforcement matrix by rule would provide the public with the opportunity to comment on the development of the matrix, and would provide nurses with ready access to the Board's *guidelines*, allowing them to better understand the potential consequence of violations (emphasis added).

In addition to the adoption of the "schedule of sanctions" as required by HB 2426, the Board has considered the development of a more comprehensive "matrix" as contemplated in the Sunset Decision document.

During the past year, the BON's Eligibility and Disciplinary Task force has been working to develop a comprehensive enforcement matrix which can be used to analyze violations of the Nurse Practice Act in a fair and consistent manner with flexibility for determining the most appropriate decision.

The Task force approved the attached Disciplinary Matrix at its last meeting April 4, 2008. It was the task force's recommendation that the Board approve the matrix as a pilot. It may be that implementation of the matrix may lead to unfair or unintended consequences and that use of its guidelines should be tested against the current decision making and Board precedent. All comments to the Pilot Disciplinary Matrix should be submitted to Dusty Johnston, General Counsel, by: mail at 333 Guadalupe, 3-460, Austin, Texas 78701; facsimile at (512) 305-8101; or email at dusty.johnston@bon.state.tx.us.

## **Texas Board of Nursing Disciplinary Matrix**

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in §213.33, published at 22 TAC §213.33. The Matrix may list other more pertinent aggravating or mitigating factors which should be considered in addition to §213.33.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and this chapter. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either this chapter, or a rule or order adopted under this chapter, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

The Board may assess administrative penalties as outlined in 22 TAC §213.32.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by Texas Occupations Code §301.461.



<p><b>§301.452(b)(1)</b> a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;</p>		
<p><u>First Tier Offense:</u></p> <p>Isolated failure to comply with procedural Board rule such as failure to renew license within six (6) months of its due date/renewal date or completing continuing education requirements. Failure to comply with a technical, non-remedial requirement in a prior order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification form.</p>	<p>Sanction Level I:</p> <p>Remedial Education, with or without \$250.00 fine.</p>	<p>Sanction Level II:</p> <p>Warning or Reprimand with \$500 or more fine for each additional violation, including probationary stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic board review.</p>
<p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive requirement in a prior order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.</p>	<p>Sanction Level I:</p> <p>Fine of \$500.00 and requirement to complete conditions of original order. Respondent may be subject to next higher sanction and an extension to the stipulations. Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations).</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension, Revocation or Voluntary Surrender.</p>
<p><u>Third Tier Offense:</u></p> <p>Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required</p>	<p>Sanction Level I:</p> <p>Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

<p>in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.</p>		
<p><b>Aggravating Circumstances for §301.452(b)(1):</b> Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.</p>		
<p><b>Mitigating Circumstances for §301.452(b)(1):</b> Unforeseen financial or health issues; not practicing nursing during stipulation period.</p>		

<p><b>§301.452(b)(2)</b> fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;</p>		
<p><u>First Tier Offense:</u> Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license.</p>	<p>Sanction Level I: Remedial Education and \$500.00 fine.</p>	<p>Sanction Level II: Denial of Licensure or Revocation of nursing license.</p>
<p><u>Second Tier Offense:</u> Intentional misrepresentation of previous nurse licensure, education, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.</p>	<p>Sanction Level I: Denial of Licensure or Revocation of nursing license.</p>	<p>Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>
<p><b>Aggravating Circumstances for §301.452(b)(2):</b> Multiple offenses; the relevance or seriousness of the hidden information as to the competency to practice nursing.</p>		
<p><b>Mitigating Circumstances for §301.452(b)(2):</b> Unforeseen financial or health issues; length of time since the discovery of the violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.</p>		

<p><b>§301.452(b)(3)</b> a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;</p> <p>Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at <a href="http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html">http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html</a>. The Board will also utilize to the extent applicable: 22 TAC §213.28, Tex. Occupations Code §301.4535 and Chapter 53 of the Texas Occupations Code.</p>		
<p><b>§301.452(b)(4)</b> conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;</p>		
<p><u>First Tier Offense:</u> Revocation of probation of a Misdemeanor.  An evaluation should be conducted under Chapter 53, Texas Occupations Code</p>	<p><u>Sanction Level I:</u>  Warning or Reprimand, including probationary stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review.  If the Respondent is also on Board ordered probation then at least the next highest sanction up to and including revocation. If it is a violation of failure to comply with criminal probation, then an analysis should be conducted in accordance with the criteria outlined in 301.452(b)(3) above.</p>	<p><u>Sanction Level II:</u>  Denial of Licensure, Revocation or Voluntary Surrender.</p>
<p><u>Second Tier Offense:</u>  Revocation of probation or parole for felony level criminal offense.</p>	<p><u>Sanction Level I:</u>  Denial of Licensure or Revocation, Texas Occupations Code, Section 53.021(b).</p>	<p><u>Sanction Level II:</u>  Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>
<p><u>Aggravating Circumstances</u> for <b>§301.452(b)(3)</b> and <b>§301.452(b)(4)</b>: Nature and serious of crime; patient harm or risk of harm to a patient; relationship of crime to practice of nursing; the extent to which practice of nursing may offer opportunity to engage in further criminal activity; and imprisonment after revocation of probation or parole;</p>		
<p><u>Mitigating Circumstances</u> for <b>§301.452(b)(3)</b> and <b>§301.452(b)(4)</b>: Evidence of rehabilitative effort.</p>		

<p><b>§301.452(b)(5)</b> use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;</p>	
Sanction:	Issuance of Cease and Desist Order with referral of all information to local law enforcement.
<p><b>§301.452(b)(6)</b> impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255;</p>	
Sanction:	<b>Revocation</b> of license for this offense.
<p><b>§301.452(b)(7)</b> directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;</p>	
<p><u>First Tier Offense:</u> Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.</p>	<p><u>Sanction Level I:</u> Remedial Education; \$500.00 fine for single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand including probationary stipulations that may include remedial education; supervised practice; limit specific nursing activities and/or periodic board review.</p>
<p><u>Second Tier Offense:</u> Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.</p>	<p><u>Sanction Level I:</u> Denial of Licensure, Revocation or Voluntary Surrender.</p> <p><u>Sanction Level II:</u> Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.</p>
<p><u>Sanction Level II:</u> Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>	

<b>Aggravating Circumstances of §301.452(b)(7):</b> Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.
<b>Mitigating Circumstances of §301.452(b)(7):</b> The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.

<b>§301.452(b)(8)</b> revocation, suspension, or denial of, or any other action relating to, the person’s license or privilege to practice nursing in another jurisdiction;		
<b>First Tier Offense:</b> Action in another jurisdiction resulting from a default order issued due to the nurse’s failure to answer violations and the violation is not one in which the other jurisdiction or Texas would have resulted in revocation but for the nurse’s failure to respond.  Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board’s alcohol or substance misuse policy.  <a href="http://www.bon.state.tx.us/disciplinaryaction/dsp.html">http://www.bon.state.tx.us/disciplinaryaction/dsp.html</a>	<b>Sanction Level I:</b>  Warning or Reprimand, including probationary stipulations that may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol; limit specific nursing activities and/or periodic board review.  Order to participate in Board approved peer assistance program.	<b>Sanction Level II:</b>  Revocation, Suspension, or Denial of Licensure when the individual doesn’t respond or is eligible for stipulated license. Action should be at least consistent with action from other jurisdiction.
<b>Second Tier Offense:</b> Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.	<b>Sanction Level I:</b>  Revocation, denial of licensure, or voluntary surrender.	<b>Sanction Level II:</b>  Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.
<b>Aggravating Circumstances for §301.452(b)(8):</b> Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.		
<b>Mitigating Circumstances for §301.452(b)(8):</b> Nurse’s failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.		

<b>§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;</b>		
<u>First Tier Offense:</u> Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.	<u>Sanction Level I:</u> Referral to a Board approved peer assistance program for nurses pursuant to Board policy on alcohol or substance abuse or misuse. <a href="http://www.bon.state.tx.us/disciplinaryaction/dsp.html">http://www.bon.state.tx.us/disciplinaryaction/dsp.html</a> <a href="http://www.bon.state.tx.us/chemical.pdf">http://www.bon.state.tx.us/chemical.pdf</a>	<u>Sanction Level II:</u> Warning with probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.
<u>Second Tier Offense:</u> Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation.	<u>Sanction Level I:</u> Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board policy on alcohol or substance abuse or misuse. Includes individuals with non disciplinary history of peer assistance participation. <a href="http://www.bon.state.tx.us/disciplinaryaction/dsp.html">http://www.bon.state.tx.us/disciplinaryaction/dsp.html</a>	<u>Sanction Level II:</u> Suspension of License until evaluation, treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation.
<u>Third Tier Offense:</u> Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.	<u>Sanction Level I:</u> Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances; Board ordered participation in an approved peer assistance program if non disciplinary peer assistance participation, no actual patient harm.	<u>Sanction Level II:</u> Suspension of License until evaluation and treatment, sobriety, and thereafter a stay of suspension with probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review.

	<p>and no other aggravating circumstances; or</p> <p>Warning or Reprimand including probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review.</p> <p>Denial of Licensure until applicant establishes they have been evaluated by a board approved evaluator, received treatment as recommended by evaluator and demonstrates one (1) year of verifiable sobriety, then license with probationary stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing.</p>	
<p><u>Fourth Tier Offense:</u></p> <p>Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>
<p><b>Aggravating Circumstances for §301.452(b)(9):</b> Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation.; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.</p>		
<p><b>Mitigating Circumstances for §301.452(b)(9):</b> Self-remediation, including participation in impaired provider program. Verifiable proof of sobriety by random, frequent drug/alcohol screens. Nurse is not currently practicing as a nurse.</p>		

<p><b>§301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;</b></p>		
<p><u>First Tier Offense:</u></p> <p>Isolated failure to comply with board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects.</p> <p>Isolated violation involving minor unethical conduct where no patient safety is at risk such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.</p>	<p><u>Sanction Level I:</u></p> <p>Remedial Education and \$250-\$500 fine. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.</p>	<p><u>Sanction Level II:</u></p> <p>Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities and/or periodic Board review. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens and practice limitations).</p>
<p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.</p>	<p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with stipulations. Fine of \$250-\$750 for each violation, remedial education, supervised practice, perform public service. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, limit specific nursing activities and/or periodic Board review. Board will use its disciplinary sanction polices related to drug or alcohol misuse in analyzing facts.</p> <p><a href="http://www.bon.state.tx.us/disciplinaryaction/dsp.html">http://www.bon.state.tx.us/disciplinaryaction/dsp.html</a></p>	<p><u>Sanction Level II:</u></p> <p>Denial of Licensure, Suspension or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed evaluation and treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic Board review. Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable</p>



	<a href="http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html">http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html</a>	Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.
<p><u>Third Tier Offense:</u></p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99.</p>	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p> <p>Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>
<p><b>Aggravating Circumstances for §301.452(b)(10):</b> Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.</p>		
<p><b>Mitigating Circumstances for §301.452(b)(10):</b> Harm to patient was not a result of care, voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.</p>		

<p><b>§301.452(b)(11) adjudication of mental incompetency;</b></p>		
	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

<b>§301.452(b)(12)</b> lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or		
<u>First Tier Violation:</u> Diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.	<u>Sanction Level I:</u> Referral to the Board approved Peer Assistance Program or Warning with stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic Board review.	<u>Sanction Level II:</u> Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic Board review.
<u>Second Tier Violation:</u> Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. Evidence of harm or risk of harm to patient due to treatment or remediation. “Lack of fitness” includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.	<u>Sanction Level I:</u> With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Warning or Reprimand with stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic Board review.	<u>Sanction Level II:</u> With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic Board review.
<u>Third Tier Violation:</u> Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.	<u>Sanction Level I:</u> Denial of licensure or revocation of nursing license.	<u>Sanction Level II:</u> Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.
<b>Aggravating Circumstances of §301.452(b)(12):</b> Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.		

**Mitigating Circumstances of §301.452(b)(12):** Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependency evaluation from a board approved evaluator who has opportunity to review the Board's file.

<p><b>§301.452(b)(13)</b> failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.</p>		
<p><u>First Tier Offense:</u> Practice below standard with a low risk of patient harm.</p>	<p><u>Sanction Level I:</u> Remedial Education and \$500 fine when there is isolated incident.</p>	<p><u>Sanction Level II:</u> Warning or Reprimand including probationary stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic board review.</p>
<p><u>Second Tier Offense:</u> Practice below standard with patient harm or risk of patient harm.</p>	<p><u>Sanction Level I:</u> Warning or Reprimand with \$500-\$1,000 fine and stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review.</p>	<p><u>Sanction Level II:</u> Denial, suspension of license, revocation of license, or request for voluntary surrender.</p>
<p><u>Third Tier Offense:</u> Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.  In addition, any intentional act or omission that risks or results in serious harm.</p>	<p><u>Sanction Level I:</u> Denial, suspension of license; revocation of license or request for voluntary surrender.</p>	<p><u>Sanction Level II:</u> Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

**Aggravating Circumstances for §301.452(b)(13):** Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.

**Mitigating Circumstances for §301.452(b)(13):** Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency.

TRD-200802168  
Dusty Johnston  
General Counsel  
Texas Board of Nursing  
Filed: April 25, 2008

◆ ◆ ◆  
**Panhandle Regional Planning Commission**

**Request for Proposals**

The Panhandle Regional Planning Commission (PRPC) is seeking proposals for a leased facility to house the Workforce Solutions Panhandle office in Hereford, Texas. The space should offer approximately 6,000 to 8,000 sq. ft. of contiguous space that can be appropriately configured for business/professional use. The office is currently located at 121 W. Park Avenue.

A copy of the Request for Proposals can be obtained by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 3:00 p.m. on May 30, 2008.

TRD-200802199  
Leslie Hardin  
Workforce Development Facilities Training and Support Coordinator  
Panhandle Regional Planning Commission  
Filed: April 28, 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 April 21, 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 San Antonio, L.P. for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35585 before the Public Utility Commission of Texas.

The requested CFA service area includes the addition of the City of Shavano Park, 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 35585.

TRD-200802186  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 25, 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 an application on April 22, 2008, for waiver of de-

nial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for five thousand-blocks of numbers on behalf of its customer, Department of the Air Force in the San Antonio 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 35587.

The Application: Southwestern Bell Telephone Company submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Southwestern Bell Telephone Company d/b/a AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

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 May 14, 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 35587.

TRD-200802187  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 25, 2008

◆ ◆ ◆  
**Request for Proposals: Consulting Expert Services Concerning the Compliance of Certain Generating Units with Rules on Governor Response and the Provision of Frequency Bias**

The Public Utility Commission of Texas (PUCT or Commission) is issuing a Request for Proposals (RFP) for a person or entity to provide consulting services in connection with a Notice of Violation issued by the PUCT against International Power America, Inc. (IPA). The PUCT is responsible for monitoring market power associated with the generation and sale of electricity in Texas. Texas Utilities Code §39.157(a). On April 11, 2008, the PUCT issued a Notice of Violation (NOV) against IPA. The NOV alleges generally that IPA did not comply with ERCOT rules and operating guides relating to governor response and frequency bias. The NOV and related information can be found on the PUCT Interchange. To reach the PUCT Interchange, go to <http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/login/pgLogin.asp>. Click on "Login." At the next screen, enter docket number 34738.

Under the direction of a PUCT staff attorney, the Contractor will perform the following services:

- \* review and evaluate the discovery responses and testimony filed in the proceeding by International Power America, Inc. and its affiliates (collectively "IPA") to assess the validity of any issues raised concerning the performance and performance capabilities of generating units owned or operated by IPA and their compliance with the rules and operating guides of the Electric Reliability Council of Texas relating to governor response and the provision of frequency bias;
- \* consult with Staff counsel concerning findings and recommendations concerning the validity of any issues raised by IPA, in accordance with the deadlines established in the procedural schedule for the contested case; and
- \* perform such other services as directed.

The contractor's duties may include, without limitation:

- \* assisting counsel in propounding and responding to discovery requests;
- \* attending the hearing in this proceeding;
- \* assisting counsel in cross-examining IPA's witnesses;
- \* assisting counsel and staff during the proceeding as directed; and
- \* assisting counsel in preparing post-hearing briefs and exceptions and replies to proposals for decision.

RFP documentation may be obtained by contacting:

Cindy Wilson, Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, TX 78711-3326

(512) 936-7069

cindy.wilson@puc.state.tx.us

RFP documentation also is located on the PUCT website at <http://www.puc.state.tx.us/about/procurement/currentrfps.cfm>

Deadline for submission is 5:00 p.m. on Thursday, May 22, 2008.

TRD-200802267

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 29, 2008



## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Denton, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Denton Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Denton. TxDOT CSJ No.: 0818DNTON. Construct hangar access TWs #1 - #4, construct holding pad, and relocate/protect utilities.

The DBE goal for the current project is 8%. TxDOT Project Manager is Harry Lorton.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following: 1) Rehabilitate RW 17-35; 2) Overlay/reconstruct ramps; 3) Rehabilitate south FBO apron; 4) Rehabilitate hangar access taxiways #24-30; 5) Earthwork for north and south RSA; 6) Construct roads to serve north of terminal building; 7) Construct stub taxiway to north general aviation apron; 8) Concrete apron expansion and reconstruction; 9) Expand terminal parking lot; 10) Rehabilitate north parallel taxiway; 11) Rehabilitate and mark parallel and stub taxiways to RW 17-35; 12) Reconstruct T-hangar taxilanes; 13) Rehabilitate north apron; rehabilitate and mark south parking apron, rehabilitate north corporate apron; 14)

Construct GA apron; 15) Expand south terminal roads; 16) Rehabilitate south terminal roads; 17) Expand run-up area; 18) Extend TW JE; 19) Relocate glide slope, replace VASI with PAPI-4 RW 35, displace threshold lights RW 35; 20) Install security fencing and gates; 21) Improve drainage and fuel farm; 22) SW3P Audit and Update; 23) Design and construction of Southeast road and access; and 24) Utility infrastructure plan to include design of utility extension and relocation as well as construction.

The City of Denton reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the City of Denton's criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Denton Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at [www.dot.state.tx.us/services/aviation/consultant.htm](http://www.dot.state.tx.us/services/aviation/consultant.htm). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### **Please note:**

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than June 2, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Amy Slaughter, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-200802266



Notice of Intent - South Padre Island Second Access from SH 100 to PR 100, Cameron County, Texas

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department) in cooperation with the Federal Highway Administration (FHWA) and the Cameron County Regional Mobility Authority (CCRMA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed South Padre Island Second Access project in Cameron County, Texas. Publication of this Notice of Intent (NOI) will serve to rescind a previous NOI published in July 2003 for the same project. The proposed project is being developed cooperatively by the department and CCRMA. Responsibilities for construction, ownership, and operation of the proposed project are currently undetermined but potentially include a public-private partnership through a Comprehensive Development Agreement between a developer and the CCRMA, public toll financing for construction and operation through the CCRMA, or public funding through the department.

As proposed, the South Padre Island Second Access project would link SH 100 on the mainland with PR 100 on South Padre Island. Currently, vehicular access to South Padre Island is limited to the Queen Isabella Memorial Causeway connecting the City of Port Isabel and the Town of South Padre Island. The proposed project would provide a second connection from the Texas mainland to South Padre Island. The proposed project would consist of construction on predominantly new right-of-way. The amount of additional right-of-way to be acquired would depend upon the alternative selected and is not known at this time.

The proposed purpose is: emergency evacuation, economic development, to enhance safety, and to enhance mobility to and from South Padre Island. The proposed project will consider several alternatives intended to satisfy the identified need and purpose. The alternatives will include the no-build alternative, Transportation System Management/Transportation Demand Management, mass transit, and roadway build alternatives. The roadway build alternatives may range from a two-lane to a six-lane road and may include limited access and non-limited access (arterial) designs, and toll and non-toll lanes. Potential alternatives will include, but will not be limited to, the alignments identified by the environmental process initiated by the July 2003 NOI.

The EIS will evaluate potential direct, indirect, and cumulative impacts from construction and operation of the proposed project including, but not limited to, the following: impacts or displacements to residents and businesses; detours; air and noise impacts from construction equipment and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains and irrigation canals; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); land use; regional and local economic interactions; vegetation including seagrass beds, dense thorn-scrub habitat, and riparian vegetation; wildlife; and aesthetic and visual resources. It is anticipated that the proposed project could have potential impacts to waters of the U.S., sea grass habitats, coastal wetlands, and socioeconomic conditions in the area.

The project may require the following approvals:

1. Section 106, National Historic Preservation Act (NHPA) - Advisory Council on Historic Preservation (ACHP), Texas Historical Commission (THC), and State Historic Preservation Office (SHPO)
2. Navigable Waterway Permit - United States Coast Guard (USCG)
3. Section 404 Clean Water Act and §10 Rivers and Harbors Act - US Army Corps of Engineers (USACE)
4. Section 7 Endangered Species Act - US Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries)
5. Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and the Marine Mammal Protection Act - NOAA Fisheries
6. Section 402 Clean Water Act, National Pollutant Discharge Elimination System (NPDES) - US Environmental Protection Agency (USEPA)
7. Section 401 Water Quality Certification - Texas Commission on Environmental Quality (TCEQ)
8. Coastal Zone Management Program - General Land Office (GLO)

The approvals required may change after field surveys are completed and an alternative is selected.

A proposed schedule for completion of the environmental review process is not available.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the draft need and purpose for the proposed project, the range of alternatives for consideration in the draft EIS, and to comment on the methodologies to evaluate alternatives. A scoping meeting will be held at South Padre Island Municipal Complex, Board of Aldermen Room (2nd Floor), located at 4601 Padre Boulevard, South Padre Island, Texas, at 6:00 PM to 8:00 PM on Thursday May 22, 2008. The department will publish notice that a scoping meeting will be held.

The department and CCRMA will complete the procedures for public participation and coordination with other agencies as described in one or both the National Environmental Policy Act and state law. In addition to any scoping meetings, the department and CCRMA will hold a series of meetings to solicit public comment during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. Correspondence will be sent to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. Comments and suggestions from all interested parties are invited to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions concerning this proposed action should be directed to the Agency Contacts listed below.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to: Mario Jorge, P.E., TxDOT Pharr District Engineer, P.O. Box 1717, Pharr, TX 78577, (956) 702-6100. The contact person for Cameron County Regional Mobility Authority is: Pete Sepulveda, Jr., CCRMA Coordinator, CCRMA, 1100 E. Monroe St., Brownsville, TX 78520, (956) 982-5414.

TRD-200802265

Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 29, 2008



## The University of Texas System

### Notice of Intent to Amend Existing Consulting Contract

The University of Texas System Administration

As required by the provisions of *Texas Government Code*, Chapter 2254, prior to amending its contract with Aviation Research Group, U.S., The University of Texas System extends an invitation to qualified and experienced consultants interested in providing the Consulting Services more fully described in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8060). Unless a better offer (as determined by U.T. System) is received in response to this invitation, U.T. System intends to amend the existing consulting U.T. System's contract with Aviation Research Group/U.S., Inc.

The address of the consultant is as follows:

Aviation Research Group/U.S., Inc.  
212 West 8th Street  
Cincinnati, Ohio 45202

The Consulting Services sought by the University relate to the Consulting Services currently provided by Aviation Research Group/U.S., Inc. with review of internal flight operations and procedures.

The initial award for services was based on:

- (1) Demonstrated competence, knowledge, and qualifications
- (2) An understanding of U.T. System operations

(3) Reasonableness of fees for service

(4) Ability to complete project within time constraints

(5) Other considerations being equal, consultant whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the State.

As the original posting indicated, the Chancellor made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with the Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

The individual to be contacted with an offer to provide such Consulting Services or with any questions regarding the Consulting Services is:

Jeffery Kauffmann

Assistant Vice Chancellor for Operations and Support Services

The University of Texas System Administration

702 Colorado, 3rd Floor

Austin, Texas 78701

Voice: (512) 499-4710

TRD-200802236

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: April 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).