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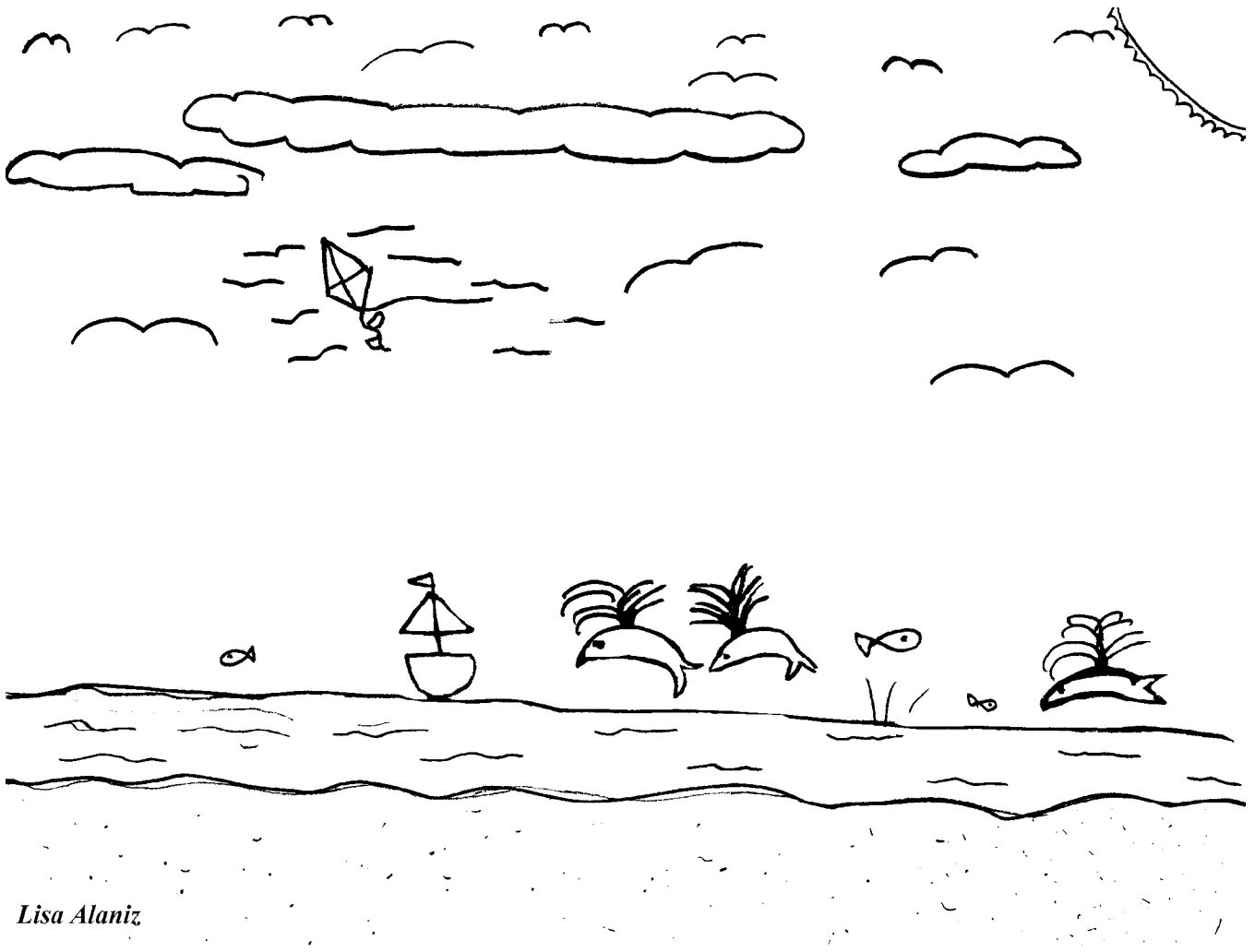
# TEXAS REGISTER

Volume 33 Number 35

August 29, 2008

Pages 7095 - 7372

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Lisa Alaniz

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.

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# TEXAS REGISTER

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# THE GOVERNOR

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

## Appointments

### Appointments for August 11, 2008

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2010, Ryan Matthews of Holliday (replacing Ferris Shaheen of Levelland who resigned).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2014, John D. Smith of Abilene (replacing Gary Cheek of Clyde who resigned).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2014, James R. Loffin of El Paso (replacing Dr. Fred Hagedorn of Lubbock whose term expired).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2014, Tivy Whitlock of Mico (Ms. Whitlock is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2014, Ronald M. Stewart of Helotes (Dr. Stewart is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2014, Marti VanRavenswaay of Arlington (Ms. VanRavenswaay is being reappointed).

Appointed to the State Health Services Council for a term to expire February 1, 2011, David Woolweaver of Harlingen (replacing James Springfield of Harlingen who resigned).

Appointed to the Governor's Advisory Committee of Physical Fitness for a term to expire at the pleasure of the Governor, Matthew Cody Carlson of Austin (replacing Beverly Kearney of Austin).

Appointed to the Executive Committee of the Office for the Prevention of Developmental Disabilities for a term to expire February 1, 2011, Marian Sokol of San Antonio (Dr. Sokol is being reappointed).

Appointed to the Executive Committee of the Office for the Prevention of Developmental Disabilities for a term to expire February 1, 2013, Valerie Kiper of Amarillo (replacing Dale Coln of Dallas whose term expired).

Rick Perry, Governor

TRD-200804465



### Proclamation 41-3154

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that Tropical Storm Edouard poses a threat of imminent disaster along the Texas Coast beginning August 3, 2008. This threat includes Bexar, Brazoria, Brazos, Calhoun, Chambers, Fort Bend, Galveston, Grimes, Harris, Jackson, Jefferson, Liberty, Matagorda, Montgomery, Orange, Walker and Wharton Counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such threat, and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 4th day of August, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200804466



### Proclamation 41-3155

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Dianne White Delisi has caused a vacancy to exist in the Texas State House of Representatives District No. 55 which consists of part of Bell County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such vacancy; and

WHEREAS, Section 3.003 of the Texas Election Code, requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in District No. 55 on Tuesday, November 4, 2008, for the purpose of electing a State Representative for House of Representatives District No. 55 to serve out the unexpired term of the Honorable Dianne White Delisi.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on August 29, 2008.

Early voting by personal appearance shall begin on October 20, 2008, in accordance with Section 85.001 of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Bell County; and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 55 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 8th day of August, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State  
TRD-200804467





# 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-0731-GA**

**Requestor:**

The Honorable Roy L. Cordes, Jr.

Fort Bend County Attorney

301 Jackson Street, Suite 728

Richmond, Texas 77469-3108

Re: Formula by which a commissioners court must set the salary of a statutory county court judge (RQ-0731-GA)

**Briefs requested by September 15, 2008**

**RQ-0732-GA**

**Requestor:**

The Honorable Frank J. Corte, Jr.

Chair, Defense Affairs and State-Federal Relations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Constitutionality of proposed legislation that would provide for the suspension or revocation of the business license of employers of undocumented persons (RQ-0732-GA)

**Briefs requested by September 15, 2008**

**RQ-0733-GA**

**Requestor:**

The Honorable Frank J. Corte, Jr.

Chair, Defense Affairs and State-Federal Relations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of the Legislature to prohibit local governmental entities from serving as "sanctuaries" for undocumented persons (RQ-0733-GA)

**Briefs requested by September 18, 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-200804499

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 20, 2008

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Opinions

**Opinion No. GA-0653**

The Honorable Florence Shapiro

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Validity of collecting a Regional Transportation Authority's sales and use tax at different levels in separate subregions (RQ-0677-GA)

## S U M M A R Y

Texas Constitution, Article VIII, section 1(a) requires that all taxation be equal and uniform. Article VIII, section 1(a) authorizes the classification of persons and property for taxation when the tax classification is not unreasonable, arbitrary, or capricious and when the tax operates equally on all persons or property within the class.

Chapter 452 of the Transportation Code authorizes a Regional Transportation Authority ("RTA") consisting of more than one subregion to collect a sales and use tax at different rates in the different subregions. For any RTA organized under chapter 452 that has more than one subregion and that collects the sales and use tax at different rates from the different subregions, the difference in tax rates could be upheld under article VIII, section 1(a) if the tax falls equally on people and property within each subregion and the different tax treatment by each subregion is reasonable.

**Opinion No. GA-0654**

The Honorable Tony Goolsby

Chair, Committee on Administration

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the holder of a rehabilitation permit from the Parks and Wildlife Department is exempt from the application of section 822.102(a)(5) of the Health and Safety Code with regard to dangerous wild animals not covered by the permit (RQ-0679-GA)

**S U M M A R Y**

The holder of a rehabilitation permit from the Texas Parks and Wildlife Department is not exempt from the application of section 822.102(5) of the Health and Safety Code with respect to animals not covered by that permit, i.e., those animals that are not indigenous to Texas.

*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-200804504

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 20, 2008



# TEXAS ETHICS COMMISSION

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

## Ethics Advisory Opinion

**EAO-481.** The Texas Ethics Commission has been asked to consider whether a candidate for speaker of the house of representatives may expend campaign funds to employ the services of a professional fundraiser. (AOR-544)

### SUMMARY

A candidate for speaker of the house of representatives may expend campaign funds to employ the services of a professional fundraiser provided that the services and additional funds raised are used only for the candidate's campaign for speaker in accordance with chapter 302 of the Government Code.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Gov-

ernment Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

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

TRD-200804458  
Natalia Luna Ashley  
General Counsel  
Texas Ethics Commission  
Filed: August 19, 2008



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. CRIMINAL JUSTICE DIVISION

##### SUBCHAPTER J. STATE PLANNING

##### ASSISTANCE GRANTS

#### 1 TAC §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, 3.9435

The Office of the Governor proposes the addition of Title 1, Part 1, Chapter 3, Subchapter J (State Planning Assistance Grants), which includes §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435.

The Office of the Governor has designated its Criminal Justice Division (CJD) as the division of the Office of the Governor that will administer State Planning Assistance Grants (SPAG). To reflect this designation, the Office of the Governor proposes moving the administrative rules regarding SPAG from Chapter 5 (the chapter relating to the Budget and Planning Office) to Chapter 3 (the chapter relating to CJD).

The proposed addition of §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435 is intended to conform the rules to the requirements of the applicable statutes, satisfy recommendations made by State Auditor's Office in its Review of Regional Planning Commissions' Financial and Performance Reports (SAO Report No. 03-013; Released 12/30/02), improve the accountability of COGs in the use of state and federal funds, assist in promoting more effective oversight of COGs, and improve COG reporting requirements.

The proposed addition of §3.9400 adds the definitions previously found in §5.81, and deletes from the original language of the section the definitions that are already defined in Chapter 3 and the definitions of terms no longer included in the rules.

The proposed addition of §3.9405 adds the general regulations previously found in §5.82 and the lobbying requirements previously found in §5.89. The proposed addition also removes the provision regarding local government participation in a COG, which is no longer needed in the rules; allows CJD to establish application deadlines to improve the funding process for SPAG; allows CJD to use more up-to-date census data when determining the proper distribution of SPAG; and requires COGs to comply with the statutes governing COGs and any other applicable statutes, rules, regulations and guidelines.

The proposed addition of §3.9410 adds the financial audit requirements previously found in §5.83. The proposed addition also conforms the language of this section to the requirements of

§391.0095, Local Government Code, by requiring a COG to submit copies of its annual financial report to CJD, the State Auditor, the Comptroller of Public Accounts, and the Legislative Budget Board and make the annual financial audit available to each member of the Legislature; allowing the Office of the Governor to request the State Auditor or an external auditor to review a COG's annual financial audit; requiring the State Auditor to report any findings and recommendations to the Legislative Audit Committee, CJD and the COG; and clarifying that an annual financial audit must be paid for from COG funds. In addition, the proposed addition specifies which auditing standards are applicable to financial audits.

The proposed addition of §3.9415 simplifies the requirements for the SPAG application previously found in §5.84 by allowing CJD to prescribe the format for the SPAG application and make a grant award after receipt and approval of the SPAG application.

The proposed addition of §3.9420 adds the requirements for salary schedules previously found in §5.85. The proposed amendment conforms the language of this section to the requirements of §391.0117, Local Government Code, by requiring a COG to submit its salary schedule to the State Auditor and make its salary schedule available to each member of the Legislature; and clarifying the responsibilities of CJD and the State Auditor regarding a COG's salary schedule.

The proposed addition of §3.9425 adds the restrictions on COG costs previously found in §5.86 and removes the definition provisions regarding the limit on the amount of total expenditure that may be spent on indirect costs. The limit on the amount of total expenditure that may be spent on indirect costs is still applicable to COGs pursuant to §391.0115.

The proposed addition of §3.9430 adds the requirements for reports previously found in §5.87 and annual work programs previously found in §5.90. The proposed addition updates the language of this section to conform it to the requirements of §391.0095, Local Government Code, by requiring a COG to submit its reports to CJD, the State Auditor, the Comptroller of Public Accounts, and the Legislative Budget Board. The proposed addition also specifies the types of information that must be included in certain COG reports.

The proposed addition of §3.9435 adds the sanctions provisions previously found in §5.88; clarifies that sanctions may be applied for a failure to submit a report or audit required under any provision in Subchapter J; and defines the roles of CJD and the State Auditor in the sanction process.

Ken C. Nicolas, Executive Director of CJD, has determined that for the first five-year period the additions are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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

Comments on the proposed additions may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 475-2594, hmorgan@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The addition of §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435 is proposed under §391.009, Local Government Code, which provides the Office of the Governor with the authority to adopt rules regarding the operation and oversight of COGs, the receipt and expenditure of funds by COGs, the annual reporting requirements of COGs, the audit requirements on funds received or expended by COGs, the establishment and the use of standards by which the productivity and performance of COGs can be evaluated, and the guidelines that COGs and governmental units must follow in carrying out the review and comment procedures for loans and grants-in-aid.

The proposed addition of §§3.9400, 3.9410, 3.9430, and 3.9435 implements §391.0095, Local Government Code, regarding reporting and audit requirements.

The proposed addition of §3.9405 and §3.9415 implements §391.012, Local Government Code, regarding state financial assistance.

The proposed addition of §3.9420 implements §391.0095, Local Government Code, regarding reporting and audit requirements and §391.0117, Local Government Code, regarding salary schedules.

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

#### §3.9400. Definitions

In addition to the definitions listed in §3.3 of this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise, when used in this subchapter.

(1) Automobile allowance: a monthly or other periodic stipend to defray the costs of operating a motor vehicle, which does not require mileage or other documentation.

(2) Indirect costs: costs that are incurred for a common or joint purpose benefiting more than one cost objective, that are not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results. CJD shall use the federal Office of Management and Budget Circulars A-87 and A-122, UGMS, and any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering indirect cost recovery provisions of these rules.

(3) Officially sanctioned conference or meeting: a conference or meeting conducted or attended as a part of a COG's official business.

#### §3.9405. General Regulations.

(a) The Office of the Governor will recognize one COG organized under Chapter 391, Local Government Code, in each state planning region or subregion. Only the COG recognized by the Office of the Governor will be eligible for a state planning assistance grant.

(b) All applications from COGs for financial assistance programs covered by the Texas Review and Comment System shall be submitted to the Office of the Governor's State Grants Team for review and comment prior to the submission to any federal, state, or other agency.

(c) Funding under the state planning assistance grant program will be based on member counties and incorporated municipalities as of September 1 for the fiscal year in which funds are being sought. The population of member cities in nonmember counties will be included in computing the amount of state grant eligibility. The population of member cities in nonmember counties shall be determined using the most recent population estimates produced by the Texas State Data Center.

(d) State aid can be expended for any legal activity of a COG as defined in §391.005, Local Government Code. State funds may be utilized as local matching funds for any other state or federal program approved by the governing body of the COG. In no case may state aid be used to pay entertainment expenses or other prohibited costs.

(e) COGs may apply for state planning assistance grant funds in accordance with application schedules developed by CJD.

(f) A COG applying for state planning assistance grant funds must have funds available annually from sources other than the state or federal governments equal to or greater than one-half of the state planning assistance grant funds for which the COG applies. The applicant may count local cash funds which will be collected during the applicant's entire fiscal year toward meeting the requirement of this subsection. Local funds carried forward from a previous fiscal year, above the amount that was equal to one-half of the state planning assistance grant funds for which the commission applied, may be counted in subsequent fiscal years as funds available from sources other than the state or federal government.

(g) The nepotism provisions of Chapter 573, Government Code, apply to a COG.

(h) An employee of a COG is subject to the rules regarding lobbying activities contained in Chapter 556, Government Code, when using state-appropriated funds.

(i) A COG must comply with all applicable federal, state, and local statutes, rules, regulations and guidelines.

#### §3.9410. Financial Audit Requirements.

(a) Not later than nine months after the close of each COG's fiscal year, each COG shall submit a completed financial audit prepared by a certified public accountant, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States and the provisions of OMB Circular A-133 and the State Single Audit Circular, when applicable, to CJD, the State Auditor, the Comptroller of Public Accounts, and the Legislative Budget Board, and shall make the financial audit available to each member of the Legislature.

(b) CJD will place primary reliance upon state single audit coordinating agencies to review COG audits. However, CJD may request that COG audits be reviewed by the State Auditor or by an external auditor. The State Auditor may review the audits, subject to approval by the Legislative Audit Committee for inclusion in the audit plan under §321.013, Government Code. If an audit is reviewed by the State Auditor or an external auditor, any findings and recommendations shall be reported to CJD, the Legislative Audit Committee, and the COG.

(c) The annual financial audit shall include the following:

(1) the amount and source of funds received by the COG;

(2) the amount and source of funds expended by the COG;  
(3) an explanation of any method used by the COG to compute an expense of the COG, including computation of any indirect costs of the COG; and

(4) a statement of indirect costs which compares actual indirect cost allocations with the proposed indirect cost allocation plan used to establish an indirect cost rate.

(d) Audit costs are allowable costs as identified in UGMS and are allocable to the various programs administered by a COG.

(e) The annual financial audit shall be paid for from the funds of the COG.

§3.9415. State Planning Assistance Grant Application.

CJD will award the entire amount of the COG's state planning assistance grant allocation upon receipt and approval of a completed grant application in a format prescribed by CJD.

§3.9420. Salary Schedules.

(a) For each fiscal year, each COG shall publish a salary schedule containing a classification salary schedule for classified positions, and identifying and specifying the salaries for positions exempt from the classification salary schedule.

(b) The salary schedule adopted by the COG may not exceed, for classified positions, the state salary schedule for classified positions as prescribed by the general appropriations act adopted by the most recent legislature. A COG may adopt a salary schedule that is equal to or less than the state salary schedule.

(c) A position may only be exempted from the classification salary schedule adopted by the COG if the exemption and the salary paid for the exempt position is within the range prescribed by the general appropriations act.

(d) Wage and salary comparability will be determined from the state position classification plan, positions exempt from the state position classification plan, the State Auditor's biennial reports on state classification and pay, and the State Auditor's reports on benefits as a percentage of salary, as well as the U.S. Department of Labor's Employment Cost index and other appropriate sources, including documentation provided by the COG.

(e) Not later than the 45th day before the date of the beginning of each COG's fiscal year, each COG shall submit its salary schedule, as approved by its governing body, including the salaries of all exempt positions, to the State Auditor and shall make its salary schedule available to each member of the Legislature.

(f) If the State Auditor, subject to the Legislative Audit Committee's approval for inclusion in the audit plan under §321.013, Government Code, has recommendations to improve a COG's salary schedule or a portion thereof, the State Auditor shall report the recommendations to CJD.

(g) CJD may not allow the portion of the schedule for which the State Auditor has recommendations to go into effect until revisions or explanations are received from a COG that are satisfactory to CJD and support the recommendations from the State Auditor.

(h) This section does not apply to a COG if the most populous county that is a member of the COG has an actual average weekly wage that exceeds the state actual average weekly wage by 20% or more for the previous year as determined by the Texas Workforce Commission in its County Employment and Wage Information Report.

(1) A COG exempted from the salary provisions by this subsection shall annually file an exemption notice with the State Auditor.

(2) The exemption notice shall contain supporting information from the Texas Work Force Commission's County Employment and Wage Information Report for the applicable period.

§3.9425. Restrictions on COG Costs.

(a) In reimbursing COG personnel for travel expenses, a COG must comply with the general appropriations act and the travel regulations adopted by the Comptroller of Public Accounts for mileage, per diem, and lodging reimbursement.

(b) A COG may not expend funds for travel in excess of the amount that may be expended for state personnel under the general appropriations act or travel regulations adopted by the Comptroller of Public Accounts for mileage, per diem, and lodging reimbursement. COG personnel eligible to receive reimbursement for actual expenses for meals and lodging may not receive reimbursement at a higher rate than those allowed for state personnel authorized to receive reimbursement for actual expenses.

(c) A member of the governing body of a COG may not be reimbursed from state-appropriated funds, including federal funds, for official travel in an amount in excess of the rates set for travel by state board and commission members.

(d) A COG may not expend any funds for the purchase of alcoholic beverages or entertainment.

(e) A COG must comply with provisions equivalent to those applied to local governments by Chapter 252, Local Government Code, when purchasing goods or services.

(f) A COG may not expend funds for an automobile allowance for a member of the governing body of the COG if the member holds another state, county, or municipal office.

§3.9430. Reports.

Not later than the last business day of the month of December of each year, each COG shall submit the following to CJD, the State Auditor, the Comptroller of Public Accounts, and the Legislative Budget Board, in a format prescribed by CJD:

(1) a report of the COG's productivity and performance during the most recently completed fiscal year, which shall include:

(A) the outcomes of the program's activities at the most detailed level reported to each sponsoring agency, including:

(i) any program output measures the COG is required to report to an entity sponsoring the program; and

(ii) any outcome measures the COG is required to report to an entity sponsoring the program;

(B) a comparison of planned performance and actual results; and

(C) an analysis of progress made toward achieving planned goals and objectives;

(2) a projection of the COG's productivity and performance during the next fiscal year based upon the COG's specified goals, objectives, and performance measures for the next fiscal year;

(3) a report of any assets disposed of by the COG, which shall include the following:

(A) an itemized list describing each disposed asset;

(B) the acquisition date of each disposed asset;

- (C) the purchase price of each disposed asset;
- (D) the reason for disposing of each asset;
- (E) the disposition date of each disposed asset; and
- (F) the final disposition price for each disposed asset;

(4) a complete annual financial statement, which shall include a list of receipts and expenditures by accounts.

§3.9435. Sanctions.

If a COG fails to submit a report or audit required under this subchapter or is determined by the State Auditor to have failed to comply with a rule, requirement, or guideline adopted under §391.009, Local Government Code, the State Auditor shall report the failure to CJD. CJD may, until the failure is corrected:

- (1) withhold any appropriated funds of the COG; or
- (2) appoint a receiver to operate or oversee the COG.

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 August 18, 2008.  
 TRD-200804438  
 David Zimmerman  
 Assistant General Counsel  
 Office of the Governor  
 Earliest possible date of adoption: September 28, 2008  
 For further information, please call: (512) 936-0181



**CHAPTER 5. BUDGET AND PLANNING OFFICE**  
**SUBCHAPTER A. FEDERAL AND INTERGOVERNMENTAL COORDINATION**  
**DIVISION 3. STATE PLANNING ASSISTANCE GRANTS**

**1 TAC §§5.81 - 5.90**

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

The Office of the Governor proposes the repeal of Title 1, Part 1, Chapter 5, Subchapter A, Division 3 (State Planning Assistance Grants), which includes §§5.81 - 5.90.

The Office of the Governor has designated its Criminal Justice Division (CJD) as the division of the Office of the Governor that will administer State Planning Assistance Grants (SPAG). To reflect this designation, the Office of the Governor proposes moving the administrative rules regarding SPAG from Chapter 5 (the chapter relating to the Budget and Planning Office) to Chapter 3 (the chapter relating to CJD).

Ken C. Nicolas, Executive Director of CJD, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the repeals.

Mr. Nicolas has also determined that for the first five-year period that the repeals are in effect the public benefit anticipated as a result of the repeals will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or businesses resulting from the proposed repeals.

Comments on the proposed repeals may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 475-2594, hmorgan@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal of §§5.81 - 5.90 is proposed under §391.009, Local Government Code, which provides the Office of the Governor with the authority to adopt rules regarding the operation and oversight of COGs, the receipt and expenditure of funds by COGs, the annual reporting requirements of COGs, the audit requirements on funds received or expended by COGs, the establishment and the use of standards by which the productivity and performance of COGs can be evaluated, and the guidelines that COGs and governmental units must follow in carrying out the review and comment procedures for loans and grants-in-aid.

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

- §5.81. *Definitions.*
- §5.82. *General Regulations.*
- §5.83. *Financial Audit Requirements.*
- §5.84. *State Planning Assistance Application Package.*
- §5.85. *Required Prior Approval of Salaries.*
- §5.86. *Restrictions on Regional Planning Commission Costs.*
- §5.87. *Reports.*
- §5.88. *Sanctions.*
- §5.89. *Lobbying.*
- §5.90. *Annual Work Program.*

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 August 18, 2008.  
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 David Zimmerman  
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 Office of the Governor  
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 For further information, please call: (512) 936-0181



**PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

**CHAPTER 354. MEDICAID HEALTH SERVICES**

**SUBCHAPTER A. PURCHASED HEALTH SERVICES**

## DIVISION 15. HEARING AID SERVICES

### 1 TAC §§354.1231, 354.1233, 354.1235

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1231, Benefits and Limitations; §354.1233, Requirements for Hearing Aid Services; and §354.1235, Requirements for Provider Participation, in Title 1, Part 15, Chapter 354, Subchapter A, Division 15, related to Medicaid hearing aid services.

#### Background and Justification

These rules apply to Medicaid clients 21 years of age and older for whom hearing aid services are payable by the Texas Medicaid program. Hearing aid services for Medicaid clients younger than 21 years of age are reimbursed through the Program for Amplification for Children of Texas (PACT).

HHSC proposes to amend these rules to better align Medicaid rules with current hearing aid technology and standards of care and to clarify the rule content.

#### Section-by-Section Summary

HHSC proposes to amend §354.1231, Benefits and Limitations, to:

clarify that the hearing aid services benefit includes monaural and binaural hearing aids;

add hearing aid repairs as a reimbursable benefit;

add replacement batteries and related supplies as a reimbursable benefit;

clarify that all authorized hearing aid providers are subject to the limitations and exclusions in subsection (b);

specify that hearing aid repairs are limited to one repair per year per hearing aid, additional repairs require prior authorization, and delete the statement: "The Texas Medicaid program shall not pay for the replacement of batteries and cords";

clarify requirements for replacement of lost, destroyed or abused hearing aids;

change the benefit for hearing aid replacement from once every six years to once every five years (per aid);

lower the decibel level for determining hearing loss from the current 45 decibels (dB) to the proposed level of 35 dB to address hearing issues and provide intervention before the client has total hearing loss;

update the binaural hearing aid benefit to correspond with current standards of care by allowing recipients to receive hearing aids for both ears if they meet the conditions for a monaural aid, and have a least a 35 dB hearing loss in both ears; and

make other necessary changes to clarify the hearing aid services benefit and update a reference from the "department" to the "Health and Human Services Commission (Commission)."

HHSC proposes to amend §354.1233, Requirements for Hearing Aids, to:

clarify that physicians, physician assistants (PAs), nurse practitioners, and clinical nurse specialists are providers that can be reimbursed for hearing examinations and evaluations;

allow audiologists to be reimbursed for fitting and dispensing hearing aids, which is within their scope of practice;

clarify the minimum warranty period for hearing aids;

clarify that providers may not charge recipients more than \$2 per day for renting hearing aids during a trial period; and

remove references to "allowable fees" and requirements to purchase United States manufactured hearing aids. These references are being removed since the Medicaid reimbursement methodology for hearing aids is covered under a separate reimbursement rule at §355.8141, which will be revised later this year to change the hearing aid reimbursement methodology from manual pricing to fixed fee pricing.

HHSC proposes to amend §354.1235, Requirements for Provider Participation, to:

clarify that all authorized hearing aid providers must be enrolled in the Texas Medicaid Program and meet licensure requirements;

remove the Medicaid provider licensure requirement by their licensing board in subsection (b)(1) - (3) because the preceding sentence already states this; and

update a reference from the "department" to the "Health and Human Services Commission (Commission)."

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the amended rules are in effect there will be a fiscal impact to state government with the state being responsible for \$4,947,428 in 2009, \$5,340,230 in 2010, \$5,762,108 in 2011, \$6,217,214 in 2012 and \$6,708,482 in 2013. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will not be an effect on small businesses or micro businesses to comply with the proposed amendments, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

#### Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing the proposed amendments, is availability of hearing aid services consistent with current technology and standards of care for Medicaid eligible adults.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment



HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under the Government Code, §2007.043.

#### Public Comment

Written comments on the proposal may be submitted to Clarice Cefai, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H-390 91X; by fax to (512) 249-3736; or by e-mail to Clarice.Cefai@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for September 18, 2008, from 3:30 - 4:30 p.m., at the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Pamela Dunn at (512) 491-1488.

#### Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

#### §354.1231. *Benefits and Limitations.*

(a) Benefits. Reimbursement for hearing aid services available through the Texas Medical Assistance (Medicaid) Program shall be provided in accordance with federal regulations found at 42 CFR Subchapter C, Medical Assistance Programs, and the provisions and procedures found elsewhere in this chapter [as cited at §354.1233, Requirements for Hearing Aid Services]. The following hearing aid services shall be reimbursed[-] through the Texas Medicaid Program:

(1) Examinations [Physician examination] to determine the medical necessity for a hearing aid performed by a physician, nurse practitioner, clinical nurse specialist, or physician assistant (PA);

(2) Hearing aid evaluations performed by a physician, nurse practitioner, clinical nurse specialist, physician assistant (PA) or audiologist, including home visit hearing evaluations;

(3) Hearing aids (monaural or binaural) and hearing aid repairs [aid];

(4) Replacement batteries and related hearing aid supplies;

(5) [(4)] Initial fitting, dispensing, and post-fitting check of the hearing aid(s) [aid]; and

(6) [(5)] First and second revisits to assess the recipient's adaptation to the hearing aid(s) [aid] and the functioning of the instrument(s) [instrument].

(b) Limitations and exclusions. All authorized hearing [Hearing] aid providers, as described in §354.1233 of this Division (relating to Requirements for Hearing Aid Services), [audiologists, and examining physicians] must comply with the following conditions and limitations established by the Health and Human Services Commission (Commission) [department] or its designee.

(1) Hearing aid services are available to persons who are 21 years of age and older and eligible for Medicaid services.

(2) An individual using a hearing aid before becoming eligible for Medicaid benefits may have a hearing evaluation conducted by an approved hearing aid services provider after becoming eligible for Medicaid. Medicaid reimbursement for a new hearing aid shall be denied if the provider concludes, based upon the evaluation findings, that the recipient's present hearing aid adequately compensates for the degree of hearing loss.

(3) Providers may not submit a hearing evaluation claim to the Commission or its designee unless the Medicaid recipient meets the eligibility criteria in §354.1233, Requirements for Hearing Aid Services.

(4) Repairs are limited to one per year per hearing aid. ~~Additional repairs require prior authorization. [The Texas Medicaid program shall not pay for the replacement of batteries or cords.]~~

(5) Replacement of an aid may be considered when loss or irreparable damage has occurred. Replacement of a hearing aid requires prior authorization. Replacement will not be authorized in situations where the equipment has been abused or neglected.

(6) [(5)] Recipients may receive home visit hearing evaluations and hearing aid fittings only on the written recommendation of a physician.

(7) [(6)] Hearing aids may be replaced once every five years. ~~[Recipients are limited to one hearing aid every six years (72 months) from the dispensing month of the present instrument.]~~

[(7)] Binaural fittings are not reimbursed except for legally blind, hearing-impaired recipients who provide documentation that they do not have any other available resources.]

[(8)] Hearing aid providers shall dispense United State manufactured hearing aids if the purchase price and quality are comparable to those of foreign manufacturers.]

(8) [(9)] Hearing aid services do not include auditory training, speechreading [speech, reading], or other types of ~~[habilitative or] rehabilitative services.~~

(9) [(10)] Hearing aids are limited to eligible recipients whose air conduction puretone average (500 Hz, 1000 Hz, 2000 Hz) in the better ear is 35 [45] dB hearing loss (HL) or greater.

(10) Recipients meet the criteria for binaural aids if they meet the conditions for a monaural hearing aid and have at least a 35 dB hearing loss in both ears.

#### §354.1233. *Requirements for Hearing Aid Services.*

(a) Hearing aid services. Providers of hearing aid services must comply with all applicable federal and state laws and regulations, recognized professional standards, and the provisions cited in Division 1, of this subchapter, Medicaid Procedures for Providers, and Division 11 of this subchapter, General Administration, in addition to the conditions, specifications, limitations established by the Texas Health and Human Services Commission (Commission) or its designee, and applicable requirements of their licensing authority.

(1) Physicians and physician assistants (PAs). Physicians and PAs shall be reimbursed for all services covered by the Texas Medicaid Program, including [-] examinations and hearing evaluations.

(2) Certain Advanced Practice Nurses. Nurse practitioners and clinical nurse specialists shall be reimbursed for examinations and hearing evaluations.

(3) ~~[(2)]~~ Audiologists. Audiologists shall be reimbursed for hearing evaluations and for the fitting and dispensing of hearing aids.

(4) ~~[(3)]~~ Fitters and dispensers. Hearing aid fitters and dispensers shall be reimbursed for the fitting and dispensing of ~~[a]~~ hearing aids ~~[aid]~~.

(b) Hearing evaluations. The Commission will only reimburse for a hearing evaluation if [Hearing evaluations must be] recommended by a provider listed in subsection (a)(1) or (a)(2) of this section [physician] based upon examination of the recipient. [Reimbursement for hearing evaluations will be made only to physicians or licensed audiologists. The recipient must have a medical necessity for a hearing aid as stated in §354.1231, Benefits and Limitations.] The recipient must not have any medical contraindications to the ability to use or wear a hearing aid.

(1) The providers listed in subsection (a)(1) and (a)(2) of this section recommending [A physician who recommends] a hearing evaluation must be licensed [to practice medicine] in the state where and when the examination [evaluation] is conducted.

(2) The physician, nurse practitioner, clinical nurse specialist, or physician assistant must indicate on the Physician Examination Report form if the recipient needs a hearing evaluation based on the examination of the recipient. Medicaid reimbursement for a hearing evaluation shall be based on the [physician's] recommendation on the Physician Examination Report form that the hearing evaluation is medically necessary.

(3) Providers must administer hearing evaluations using appropriate procedures as specified within their scope of practice and recognized professional standards.

(4) Reimbursement for home visit hearing evaluations shall be made if the recipient's physician has documented that the recipient's medical condition prohibits traveling to the provider's place of business.

(5) Providers of hearing evaluations must have a report in the recipient's record. Providers must include in the report hearing evaluation test data.

(6) Hearing evaluations performed by fitters and dispensers are not reimbursable. If a fitter or dispenser performs a hearing evaluation on a recipient, the recipient shall not be billed for the hearing evaluation.

(c) Hearing aids. Providers must offer each recipient eligible for a hearing aid a new instrument that meets the recipient's hearing need ~~[and that is within the allowable fee paid by the Texas Medicaid Program].~~

~~[(1) Hearing aids above the maximum allowable fee. The Texas Medicaid Program reimburses only up to the maximum allowable fee for hearing aids as referenced in §355.8141, Reimbursement for Hearing Aid Services.]~~

(1) ~~[(2)]~~ Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model that meets the performance specifications of the manufacturer and the hearing needs of the recipient. Providers must also ensure that each hearing aid is covered by at least a standard 12-month manufacturer's warranty, effective from the dispensing date.

(2) ~~[(3)]~~ Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with all necessary tubing, cords, connectors, and a one-month supply of bat-

teries. The instructions for care and use of the hearing aid must be included with the hearing aid package.

(3) ~~[(4)]~~ Thirty-day trial period. Providers must allow each eligible recipient thirty days to determine if the recipient is satisfied with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of thirty consecutive days from the dispensing date. Providers must inform recipients of the trial period and present the beginning and ending date of the trial period to the recipient in writing.

(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the recipient is satisfied with the result of the hearing aid or the provider determines that the recipient cannot benefit from the dispensing of an additional hearing aid. A new trial period begins with the dispensing date of each hearing aid.

(B) Providers may charge a rental fee for hearing aids returned during the trial period.

(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and the State Board of Examiners for Speech-Language Pathology and Audiology.

(ii) The [If there is no signed agreement between the recipient and the provider specifying a greater amount, the] maximum rental fee for eligible Medicaid recipients shall be \$2 per day. This fee shall not be a covered benefit of the Texas Medicaid Program. Recipients shall be responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the recipient's file the signed certification acknowledging responsibility to pay hearing aid rental fees.

(iii) Providers must comply with all procedures and directions of the Texas Medicaid Program regarding forms and certifications required during the 30-day trial period. Providers must allow thirty days to elapse from the hearing aid dispensing date before completing a "30-day trial period certification statement." ~~[-]~~ The certification statement must be maintained by the provider in the recipient's file.

(4) ~~[(5)]~~ Post-fitting checks. The fitter and dispenser must perform a post-fitting check of the hearing aid within five weeks of the initial fitting. The post-fitting check is part of the dispensing procedure and is not reimbursed separately.

(5) ~~[(6)]~~ First revisit. The first revisit shall include a hearing aid check. Providers must make counseling available as needed within six months of the post-fitting check.

(6) ~~[(7)]~~ Second revisit. The purpose of the second revisit is to make any necessary adjustments to the hearing aid. Provider must conduct a second revisit as needed.

*§354.1235. Requirements for Provider Participation.*

(a) Provider enrollment. All authorized hearing aid providers, as described in §354.1233 of this Division (relating to Requirements for Hearing Aid Services), [Each physician, audiologist, or fitter and dispenser of hearing aids] claiming reimbursement for hearing aid services provided as a Title XIX benefit to an eligible Medicaid recipient must be enrolled in the Texas Medicaid Program.

(1) To be eligible for reimbursement of Title XIX benefits for hearing aid services covered by the Texas Medicaid Program, each provider of medical care and services must enter into a written agreement with the Health and Human Services Commission (Commission) ~~[department].~~

(2) Participating providers must comply with all federal and state laws and regulations governing the Texas Medicaid Program. Providers must also comply with the provisions, conditions, certifications, and limitations as described in this subchapter.

(b) Provider licensure and certification. To be eligible for participation as a provider of hearing aid services under the Texas Medicaid Program, all authorized hearing aid providers, as described in §354.1233 of this Division, [physicians, audiologists, and fitters and dispensers] must meet applicable federal and state licensing and certification laws and rules for the services they provide. ~~[For Medicaid providers of hearing aid services practicing in the State of Texas, these include:]~~

~~[(1) Physicians (MD or DO) must be currently licensed to practice medicine by the State Board of Medical Examiners.]~~

~~[(2) Audiologists must be currently licensed by the State Board of Examiners for Speech-Language Pathology and Audiology and be certified by the American Speech-Language-Hearing Association (ASHA) or meet ASHA equivalency requirements.]~~

~~[(3) Fitters and dispensers must be currently licensed by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instrument.]~~

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 August 15, 2008.

TRD-200804393

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 424-6900



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

##### SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

The Public Utility Commission of Texas (commission) proposes the repeal of §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, new §25.475, relating to General Retail Electric Provider (REP) Requirements and Information Disclosures to Residential and Small Commercial Customers, and an amendment to §25.476, relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact. The proposed repeal, new rule and amendment (collectively, rules) will allow for enhanced disclosure for customer contracts. Project Number 35768 is assigned to this proceeding.

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been

proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested only in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Shawnee Claiborn-Pinto, Senior Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Claiborn-Pinto has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the section will be clearer understanding of the contract documents by customers and REPs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no flexibility analysis is needed. There is some anticipated economic cost to persons who are required to comply with the proposed sections as they will require new document production and may have systems costs to some parties which are unknown to the commission and would be difficult for the commission to quantify. Ms. Claiborn-Pinto has concluded that the public benefit will outweigh the cost to persons who are required to comply with the rules.

Ms. Claiborn-Pinto has also determined that for each year of the first five years the rules are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, October 10, 2008, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication. The commission will also take comment on the following questions pertaining to the proposed rules:

1. *What information should constitute sufficient evidence that a customer has relocated as contemplated in §25.475(c)(2)(D)?*
2. *What customer protection provisions should be delineated in the waiver for commercial customers contemplated in the proposed §25.475(j)?*
3. *Should there be a disclosure statement in the contract for the purchase of electricity by a REP from a Distributed Renewable Generation owner or Independent School District Solar Generation Owner? If so, what specific disclosures should be required?*
4. *Should the commission allow products for residential and small commercial customers that do not have a method of determining the price from publicly available data or otherwise independent of the retailer's proprietary knowledge? If so, can these be considered 'contracts' because there may not be a meeting of the minds on price?*
5. *If the commission retains a variable price product should there be additional customer protections put in place? If so, what additional protections should the commission put in place?*

6. *Is the 50 kW the appropriate threshold for allowing waiver of the standard protections in the commission's rules?*

Initial comments on the rules may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposals are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rules. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 35768.

**16 TAC §25.475**

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

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (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; PURA §39.101 which grants the commission the authority to establish various, specific protections for retail customers; and PURA Chapter 17, Subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.101 and PURA Chapter 17, Subchapters A, C and D.

§25.475. *Information Disclosures to Residential and Small Commercial Customers.*

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 August 18, 2008.

TRD-200804427

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 936-7223



**16 TAC §25.475**

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (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; PURA §39.101 which grants the commission the authority to establish various, specific protections for retail customers; and PURA Chapter 17, Subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail

customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.101 and PURA Chapter 17, Subchapters A, C and D.

§25.475. *General REP Requirements and Information Disclosures.*

(a) Applicability. The requirements of this section apply to retail electric providers (REPs) and, when specifically stated, aggregators, in connection with service and marketing. REPs and aggregators are responsible for representations to customers and prospective customers concerning retail electric service that are made through advertising or other means. REPs have three months from the effective date of this section to conform all electricity products and contract documents to the requirements of this section. However, REPs are not required to conform term contracts in effect on December 31, 2008, but any renewal of a term contract after December 31, 2008 must comply with the requirements of this section.

(b) Definitions. The following words and terms, when used in this section shall have the following meanings, unless the context indicates otherwise.

(1) Affirmative consent--A formal acknowledgement by the customer, received and documented pursuant to §25.474 of this title (related to Selection of Retail Electric Provider) or subsection (f)(5) of this section, that the customer is re-enrolling with the REP to receive a specific product.

(2) Automatic renewal--Renewal of a contract at the end of an original contract period without obtaining the customer's affirmative consent.

(3) Contract--the Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation of enrollment pursuant to §25.474 of this title.

(4) Contract documents--The TOS, EFL and YRAC.

(5) Contract period--The time period the contract is in effect.

(6) Guaranteed fixed price product--A retail electric product for which the price for each billing period is the same and will not change throughout the term of the contract and includes all Transmission and Distribution Utility (TDU) recurring charges.

(7) Indexed product--A retail electric product for which the price, including recurring TDU charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or elements and is disclosed to the customer.

(8) Limited fixed price product--A retail electric product for which the price (including recurring TDU charges) for each billing period of the contract period is the same throughout the contract and may vary from the disclosed amount solely to reflect actual changes in the TDU charges, changes to the ERCOT administrative fee or Texas Regional Entity Fee or changes resulting from federal state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

(9) Price--The cost for a retail electric product that includes all recurring charges but may exclude non-recurring charges.

(10) Recurring charge--A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a calendar year. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that

class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.

(11) Variable price product--A retail product for which price may vary according to a method determined by the REP and that is disclosed to the customer.

(c) General Retail Electric Provider requirements.

(1) General Disclosure Requirements.

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs and YRACs distributed by a REP or aggregator shall be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited activities include, but are not limited to:

(i) Using the term or terms "fixed" to market a product that does not meet the definition of a guaranteed fixed or limited fixed price product.

(ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.

(iii) For an affiliate REP, suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP affiliated with a TDU will provide a customer with better quality of service from the TDU as a result of that affiliation.

(iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any other REP or aggregator.

(v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the actual contract.

(B) Written and electronic communications shall not refer to laws, including commission rules without providing those rules. All printed advertisements, electronic advertising over the Internet, and websites, shall include the REP's certified name or the aggregator's registered name, and the number of the certification or registration.

(C) The TOS, EFL, and YRAC shall be provided to each residential and small commercial customer upon enrollment. Each document shall be provided to the customer whenever a material change is made to the specific document and upon a customer's request, at any time free of charge.

(D) A REP shall retain a copy of each version of the TOS, EFL, and YRAC during the time the plan is in effect for a customer and for four years after contract period ends.

(E) A REP shall retain the methodology used to calculate the average price on the EFL for four years after the contract period ends.

(F) A REP shall file a copy of the TOS, and an EFL for each product offered during the quarter on March 30, June 30, September 30, and December 30 of each year in a project designated by the commission.

(2) General contracting requirements.

(A) A TOS, EFL, and YRAC shall be complete, shall be written in language that is clear, plain and easily understood, and shall be printed in paragraphs of no more than 250 words in a font no smaller than 10 point unless otherwise permitted by the commission. References to laws including commission rules in these documents shall include the law.

(B) All contract documents shall be in English and Spanish.

(C) All contract documents shall be available to the commission to post on its website (if the REP chooses to post offers to the website).

(D) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. There shall be no charge to the customer as a result of the relocation of the customer if the customer provides reasonable evidence that the customer no longer occupies the location specified in the contract. The contract terminates on the day the REP receives reasonable evidence that the customer no longer occupies the location specified in the contract.

(E) A contract shall be only for one of the following types of products: guaranteed fixed price product, limited fixed price product, indexed product or a variable price product. In addition, the contract shall clearly specify the product it provides.

(F) A REP shall not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract period of 12 months or less.

(G) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

(H) A REP shall comply with its contracts.

(3) Specific contract requirements.

(A) The contract period of a guaranteed fixed price product shall be disclosed, shall not change throughout the contract period of the contract and shall be a minimum of six months. For a guaranteed fixed price product, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' length of contract term, prices, or pricing methodology.

(B) The contract period of a limited fixed price product shall be disclosed, shall not change throughout the contract period and shall be for a minimum of six months. For a limited fixed price product, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' length of contract term, pricing methodology, or prices, during the contract term.

(C) The contract period of a variable price product or an indexed product may be month to month or longer term, and the length of the term shall be disclosed in the contract. For variable price or indexed products with contract periods longer than 31 days, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' pricing methodology or length of contract terms for the variable price product or indexed product contracts. If the contract period is month to month or less than or equal to 31 days, the 45-day notice may be used to change pricing methodology or length of the contract.

(D) The start and end dates of the contract shall be available to the customer upon request. The start and end dates may be estimated if the REP cannot determine these dates. After the start date is known, the end date may be estimated consistent with the TDSP meter reading schedule for the customer during the month of expiration. An early termination fee shall not be charged to the customer for switching service on any day following the estimated or actual end date disclosed by the REP.

(4) Website and call center specific requirements.

(A) A REP shall have call center agents who shall be able to communicate with customers in English and Spanish and any other language used to advertise to the customer.

(B) Each REP that offers retail electric products for enrollment on its website shall prominently display the EFL for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The EFL shall be printable in no more than a two page format. The EFL, TOS, and YRAC for any products offered for enrollment on the website shall be available for viewing or downloading.

(d) Advertising claims. If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator shall comply with this section.

(1) Print advertisements. Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement shall be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP)." Upon request, a REP shall provide the contract documents relating to a product being advertised.

(2) Television, radio, and internet advertisements. A REP shall include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the REP)." This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP shall provide the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(3) Outdoor advertisements. A REP shall include, in a font size and format that is legible to the intended audience, its certified name, certification number, telephone number and Internet address (if available).

(4) Renewable energy claims. A REP shall authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Fuel Mix and Emissions Disclosure). If a REP relies on supply contracts to authenticate its sales of renewable energy, it shall file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

(e) Changes in contract and notice of changes. A REP may change the terms and conditions of a contract for a retail electric product only to the extent permitted by this section and by the terms of the contract. A REP shall provide written notice to its customers at least 45 days in advance of the date that the material change in the contract will be applied to the customer's usage or any other provisions of service. For a limited fixed price product, variable product or an indexed product, a material change notice is not required for a price change that is consistent with this section and the price terms set forth in the contract.

(1) Contents of material change notice. The notice shall:

(A) be provided in or with the customer's bill or in a separate document;

(B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;

(C) identify the material change;

(D) clearly specify what actions the customer needs to take to terminate the contract if the customer does not accept the proposed changes to the contract; and

(E) state in bold lettering that no termination penalty shall apply for 60 days from the date that the notice is sent to the customer. No such statement is required if the customer would not be subject to a termination penalty under any circumstances.

(2) Notice not required. Notice consistent with paragraph (1) of this subsection is not required for the following changes:

(A) A change that benefits the customer;

(B) For a limited fixed price product, a pricing change that is made to reflect actual changes in TDU charges, ERCOT Administrative or TRE fees or actual charges resulting from a federal, state or local law.

(f) Contract expiration and renewal offers. The REP shall send a notice of contract expiration separate from the bill at least 60 days prior to the date of contract expiration but no more than 75 days in advance of expiration. Nothing in this section shall preclude a REP from offering a new contract to the customer at any other time during the contract period.

(1) Contract Expiration. Separate written notice of contract expiration shall include:

(A) a statement on the outside of the envelope or in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice:"

(B) The approximate date the existing contract will expire; and

(C) A statement in bold lettering no smaller than 14 point font that no termination penalty shall apply for 60 days from the date that the notice is sent. No such statement is required if the customer would not be subject to a termination penalty under any circumstances.

(2) Renewal Offers. In the contract expiration notice the REP shall include:

(A) The contract terms including EFLs of any renewal offers available to the customer;

(B) The actions the customer needs to take (if any) to continue to receive service from the REP under the terms of any of the disclosed renewal offers and the deadline by which actions must be taken;

(C) In the event that no renewal offers are presented to the customer, or the customer declines all renewal offers for which affirmative consent is required, a disclosure that the failure of the customer to switch to another REP by the specified date will result in the disconnection of service; and

(D) A statement in bold lettering no smaller than 14 point font that establishing service with another REP can take up to 45 days.

(3) Automatic Renewal. If a customer's TOS includes an automatic renewal clause, a REP may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with this section. Any service renewed through the use of an automatic renewal clause shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be permitted by this section and consistent with the contract.

(4) Proration of Early Termination Fees. For any contract with a term of one year or longer, the REP shall prorate any early termination fees after three quarters of the term has expired, if the customer is current in the payment of all charges. The REP shall prorate such a fee by reducing the fee by the ratio of the portion of the original term that has expired to the original term (in months).

(5) Affirmative consent. A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Each recording, electronic document, or written letter of authorization (LOA) must:

(A) Indicate the customer's name, billing address, service address, ESI ID;

(B) Indicate the identification number of the TOS and EFL under which the customer will be served;

(C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL and YRAC;

(D) Indicate the price(s) which the customer is agreeing to pay;

(E) Indicate the date of the re-enrollment, the contract period, and the start and end dates of contract period;

(F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response;

(G) Request the customer's account access verification data, as required by §25.474 of this title and obtain the customer's response with this information. If a written LOA, request and obtain the customer's response signature; and

(H) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.

(g) Terms of service document. The following information shall be conspicuously contained in the TOS:

(1) Identity and contact information. The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference).

(2) Pricing and payment arrangements.

(A) The amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;

(B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;

(C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or late payment, returned checks charges, and charges for cancellation or termination of service;

(D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the TOS; and

(E) A description of payment arrangements and bill payment assistance programs offered by the REP.

(3) Deposits. If the REP requires deposits from its customers:

(A) a description of the conditions that will trigger a request for a deposit;

(B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;

(C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;

(D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits);

(E) the right of a customer or applicant who qualifies for the rate reduction program to pay a required deposit that exceeds \$50 in two equal installments pursuant to §25.478 of this title; and

(F) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) Rescission, Cancellation Termination and Disconnection.

(A) In a conspicuous and separate paragraph or box:

(i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and

(ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or email address that the customer may use to rescind service.

(B) A statement as to how service can be cancelled and any penalties that may apply;

(C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and the notification and evidence required;

(D) A statement of customer's ability to terminate service without penalty if the REP notifies the customer of a material change in the terms and conditions of the contract; and

(E) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.

(5) Antidiscrimination. A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in an economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, a statement

informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract period of 12 months or less.

(6) Other terms. Any other material terms and conditions, including, exclusions, reservations, limitations of liability, that are a part of the contract for the retail electric product.

(7) Automatic renewal. If a product offered by a REP includes an automatic renewal of the contract at the end of the contract period, the TOS shall contain a statement disclosing that to the customer. The statement must clearly indicate if the price during the renewal term will be different than the price during the preceding contract term and disclose the renewal pricing and the corresponding EFL if different, or state that the month-to-month renewal price and EFL will be provided 60 days prior to the expiration of the contract.

(8) Version number. A REP shall assign an identification number to each version of its TOS, and shall publish the number on the terms of service document

(h) Electricity Facts Label. The EFL shall be unique for each product offered and shall include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.

(1) Identity and contact information. The REP's certified name and business name (dba) (if applicable), mailing address, Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference).

(2) Pricing disclosures. Pricing information shall be disclosed by a REP in an EFL. The EFL shall state specifically whether the product is a guaranteed fixed price, limited fixed price, or variable price or indexed product.

(A) The EFL shall provide the total average price for electric service reflecting all recurring charges to the customer.

(B) The total average price for electric service shall be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:

(i) For residential customers, 500, 1,500, and 2,500 kilowatt hours per month using the commission-approved load profile; and

(ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month.

(C) If a REP combines the charges for retail electric service with charges for any other product, the REP shall:

(i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and

(ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.

(D) For a guaranteed fixed price product or a limited fixed price product, the EFL shall include the total average price for electric service over the term of the plan and the pricing components (e.g., monthly service charge or charge for failing to meet or exceeding

a specified kWh, if any, and per-kilowatt hour charges and a description of when such charges apply) included in the average pricing disclosure.

(E) For a variable price or indexed product, the REP shall estimate (or use actual values if known) the variables used to determine the variable price or the formula used to determine the indexed price for the period of the contract and shall calculate the price for each specified kWh usage over the term of the contract. The EFL shall state the average price per kWh that results from the calculation. If the REP offers a promotional rate, the REP may put the charges for the promotional period below the average charges and must clearly label the promotional rate and the time for which it is in effect. The REP shall notify the customer how much the price may change during the contract.

(3) Fee Disclosures.

(A) If customers may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL shall include a statement in the Electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and shall disclose how the customer can determine the price and applicability of the special charge.

(B) A listing of all fees that may be charged to the customer.

(4) Term Disclosure. EFL shall include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.

(5) Renewable Energy disclosures. The EFL shall include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.

(6) Format of Electricity Facts Label. REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph: Figure: 16 TAC §25.475(h)(6)

(7) Version number. A REP shall assign an identification number to each version of its EFL, and shall publish the number on the terms of service document.

(i) Your Rights as a Customer disclosure. The information set out in this section shall be included in a REP's "Your Rights as a Customer" document, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

(1) A YRAC document shall be consistent with the TOS for the retail product.

(2) The YRAC document shall inform the customer of the REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).

(3) The YRAC document shall inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.

(4) The YRAC document shall inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this



title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.

(5) The YRAC document shall inform the customer of the availability of:

(A) financial and energy assistance programs for residential customers;

(B) any special services such as readers or notices in Braille or TTY;

(C) Special policies or programs available to residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems; and

(D) discounts for qualified low-income residential customers;

(6) The YRAC document shall inform the customer of the following customer rights and protections:

(A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);

(B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

(C) Protections relating to disconnection of service pursuant to §25.483 of this title;

(D) The right of a new customer to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS;

(E) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(F) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and

(G) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).

(7) Identity and contact information. The REP's certified name and business name (dba), certification number, mailing address, Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.

(j) Commercial Customer disclosure. Notwithstanding §25.471(a)(3) of this title (relating to General Provisions of Customer Protection Rules), all commercial customers over 50 kW shall be given a copy of the list of rights they are waiving to enter into a contract not governed by the commission's customer protection rules and must affirmatively choose to waive those rights. Such disclosure shall also inform the customer that they have the right to choose a product from the REP (if applicable) and other REPs that do not require a waiver of these rights.

(k) Fuel mix and emissions disclosure. A fuel mix and emissions disclosure pursuant to §25.476 of this title shall be available upon request.

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 August 18, 2008.

TRD-200804428

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 936-7223



### **16 TAC §25.476**

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (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; PURA §39.101 which grants the commission the authority to establish various, specific protections for retail customers; and PURA Chapter 17, Subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.101 and PURA Chapter 17, Subchapters A, C and D.

*§25.476. Fuel Mix and Emissions Disclosure [Labeling of Electricity with Respect to Fuel Mix and Environmental Impact].*

(a) Purpose. The purpose of this section is to establish the procedures by which retail electric providers (REPs) calculate and compose their Fuel Mix and Emissions Disclosure (FMED) pursuant to this section, and their renewable content [~~disclose fuel mix and environmental impact information on the Electricity Facts Label~~] pursuant to §25.475 of this title (relating to General REP Requirements and Information Disclosures to Residential and Small Commercial Customers [Information Disclosures to Residential and Small Commercial Customers]).

(b) (No change.)

(c) Definitions. The definitions set forth in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, the following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:

(1) Authenticated generation--Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired renewable energy credit (REC), or supply contract between a REP and an owner of generation assets[; ~~to be used in calculating the retailer's Electricity Facts Label disclosures~~].

(2) (No change.)

(3) Environmental impact--The information that is to be reported on the FMED [~~Electricity Facts Label~~] under the heading "Emissions and waste per 1,000 kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (f)(3) of this section.

(4) Fuel mix--The information that is to be reported on the FMED [Electricity Facts Label] under the heading "Sources of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, and "other" sources, calculated as specified in this section. Renewable energy shall include power defined as renewable by PURA §39.904(d).

(5) - (9) (No change.)

(d) Marketing standards for "green" and "renewable" electricity products.

(1) A REP may market an electricity product as "green" only in the following instances:

(A) (No change.)

(B) All statements representing the product as "green," if not containing 100% renewable energy, as defined in PURA §39.904(d), shall include a footnote, parenthetical note, or other obvious disclaimer that "A 'green' product may include Texas natural gas and renewable energy. See the FMED [Electricity Facts Label] for this product's exact mix of renewable energy and Texas natural gas."

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

(e) (No change.)

(f) Calculating fuel mix and environmental impact disclosures.

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

(4) For the purposes of disclosures on the FMED [Electricity Facts Label], the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the FMED [Electricity Facts Label] must be consistent with REC account information maintained by the Renewable Energy Credits Trading Program Administrator. A REC offset may be used to authenticate the renewable attributes of the current MWh output from its associated supply contract.

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

(7) If a REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the FMED [Electricity Facts Label], the REP:

(A) may apply any supply contract to the calculation of any product FMED [label] as long as the sum of MWh applied does not exceed the MWh acquired under the contract; and

(B) may apply any number of RECs to the calculation of any product FMED [label] as long as:

(i) the number of RECs applied to all product FMEDs [labels] is consistent with the number of RECs the retailer has retired with the REC Trading Program Administrator, and

(ii) the number of RECs applied to each product FMED [label] results in a renewable energy content for each product that is equal to or greater than a benchmark to be calculated from data maintained by the REC Trading Program Administrator. The benchmark shall be defined on an annual basis as:

Figure: 16 TAC §25.476(f)(7)(B)(ii)

[Figure: 16 TAC §25.476(f)(7)(B)(ii)]

(8) An affiliated REP shall use only one FMED [fuel mix and environmental impact disclosure] for all price-to-beat products

sold to residential and small commercial customers of its affiliated transmission and distribution utility, except that if the predecessor bundled utility had an approved renewable energy tariff in accordance with §25.251 of this title (relating to Renewable Energy Tariff) on file with the commission during the freeze on existing retail base rate tariffs established by PURA §39.052, the affiliated REP may sell a renewable price-to-beat product.

(9) Any REP may anticipate the fuel mix and environmental impact of a new product.

(A) On the fuel mix disclosure of a new product's FMED [Electricity Facts Label], the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."

(B) On the environmental impact disclosure of a new product's FMED [Electricity Facts Label], the heading "Emissions and waste per 1,000 kWh generated" shall be replaced with "Projected emissions and waste per 1,000 kWh generated."

(C) (No change.)

(g) Fuel Mix and Emissions Disclosure.

(1) Fuel mix disclosures. The FMED shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The break-down for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydropower, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year. The fuel mix percentage for renewable energy shall also be disclosed on the EFL for the product pursuant to §25.475 of this title.

(A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%."

(B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%."

(2) Emissions and waste disclosures. The FMED shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide, particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (1) of this subsection. Emissions and waste disclosures shall be based on data for the most recent calendar year.

(A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.

(B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.

(C) The registration agent shall calculate the statewide system average rates to be used in accordance with this subsection.

(3) Renewable energy claims. A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

(4) Format of Fuel Mix and Emissions Disclosure. Each FMED shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph:  
Figure: 16 TAC §25.476(g)(4)

(5) Distribution of FMED. Upon request, a REP shall provide the FMED for one or more products to a customer, applicant, commission staff or the program administrator of the renewable energy credits trading program.

(h) ~~[(g)]~~ Annual update of FMED ~~[Electricity Facts Label]~~. Each REP shall update its ~~FMED~~~~[Electricity Facts Label]~~ for each of its products no later than July 1 of each year, so that the ~~FMED~~ ~~[Electricity Facts Label]~~ displays the fuel mix and emissions data calculated pursuant to this section and reported to the registration agent for that product under subsection (f)(2) of this section for generation purchased during the preceding calendar year. ~~[The commission shall make available on the "power to choose" Internet website the fuel mix and emissions data published by each REP on its Electricity Facts Labels for each product marketed to residential customers.]~~

(i) ~~[(h)]~~ Compliance and enforcement.

~~[(1) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission may take remedial action consistent with PURA §§39.101(e), 39.356, or 39.357, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.]~~

~~[(2) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP, thereby denying the REP the right to provide service in this state.]~~

~~[(3) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General, Consumer Protection Division in order to ensure consistent treatment of specific alleged violations.]~~

~~[(4) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each REP to the extent necessary to verify the accuracy of the REP's Electricity Facts Label.]~~

~~[(5) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each owner of generation assets to the extent necessary to verify the accuracy of the owner of generation assets' fuel mix and emissions data reported under subsection (e)(3) of this section.]~~

~~[(6) In exercising any enforcement authority, inspection, audit, or other action under this section, the commission will ensure the confidentiality of competitively sensitive information.]~~

~~[(i) This section is effective June 1, 2004.]~~

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

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Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Earliest possible date of adoption: September 28, 2008  
For further information, please call: (512) 936-7223

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## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

### 16 TAC §26.412

The Public Utility Commission of Texas (commission) proposes an amendment to §26.412, relating to Lifeline Service Program. The amendment increases the Lifeline Discount Amount (LDA) for eligible customers of Eligible Telecommunications Providers (ETPs) operating in the service areas of AT&T Texas, Verizon, Embarq, and Windstream, or their successors. Specifically, the amendment increases the LDA by an amount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the four companies mentioned above as a result of the settlement agreement approved by the commission in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and Public Utility Commission Substantive Rule §26.403*. Project Number 35629 is assigned to this proceeding.

Stephen Mendoza, Rate Analyst for the Rate Regulation Division, has determined that for the first year the amendment is in effect, there will be a small fiscal impact to the State to administer the amendment. The impact will be due to a rewrite of software code for the input database. This will be a one-time cost occurrence. For the remaining four-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Mendoza has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be a 25% reduction in any rate increases for LDA eligible customers in regulated exchanges of the four companies mentioned above due to the settlement agreement approved by the commission in Docket Number 34723. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. The persons who are required to comply with the amendment are the ETPs operating in the incumbent local exchange (ILEC) service areas of AT&T Texas, Verizon, Embarq, and Windstream. The direct impact of the amendment on these ETPs--the loss of revenue from customers--will be offset by revenue that the ETPs receive from the Texas Universal Service Fund. There may be a small economic cost to ETPs who are required to comply with the amendment, resulting from the cost of changing the reimbursement amounts for the LDA in their billing systems. The ETPs will also benefit, however, because the higher LDA should permit them to maintain low-income customers that might discontinue basic telephone service when basic network service rates rise.

Mr. Mendoza has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, September 25, 2008, at 10:00 a.m. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 35629.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (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 specifically §56.021, which provides the commission the authority to adopt and enforce rules relating to the reimbursement of telecommunications carriers for the provision of lifeline service.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §56.021.

§26.412. *Lifeline Service Program.*

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

(f) Lifeline support and recovery of support amounts.

(1) Lifeline discount amounts. All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

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

(C) Additional state reduction [ ~~with federal matching~~ ]--A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of \$3.50 in the monthly amount of intrastate charges; provided, however, that beginning January 1, 2009, Lifeline providers operating in the ILEC service areas of AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), Central Telephone Company d/b/a Embarq (Central), United Telephone Company d/b/a Embarq (United), and Windstream Communications Southwest (Windstream), or their successors, (collectively, Settling ILECs) shall provide, in addition, a reduction (Settled Discount) equal to 25% of any actual increase by a Settling ILEC to its residential basic network service rate that occurs in a Settling ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008 in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and Public Utility Commission Substantive Rule §26.403* (Settled Increase). A

Settling ILEC shall file with the commission tariffs implementing a Settled Discount at the time it files for a Settled Increase.

(i) The effective date of a Settled Discount shall have the same effective date as the corresponding Settled Increase.

(ii) A Settled Discount shall be calculated by a Settling ILEC on the basis of the weighted average rate increase. The calculation of the weighted average rate increase shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Settled Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Settled Increase times the corresponding Settled Increase. The weighted average rate increase calculation shall be included in the tariff filing made to implement the discount.

(iii) A Settled Discount shall be provided to all qualifying Lifeline customers who are located in the ILEC service area of the Settling ILEC that has implemented the corresponding Settled Increase.

(D) - (E) (No change.)

(2) Lifeline support amounts. The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection:

(A) (No change.)

(B) ETP--An ETP shall receive state support of up to a maximum of \$3.50; provided, however, that ETPs operating in the ILEC service areas of the Settling ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(C) of this subsection. If an ETP has been designated as an ETC, then the certificated provider would also receive support amounts outlined in subparagraph (A) of this paragraph.

(C) Resale ETP--A resale ETP shall receive Lifeline Service support equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The Texas Universal Service Fund (TUSF), regardless of whether the Lifeline Service Discount is state or federally mandated, will provide all Lifeline Service support.

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

(v) A resale ETP shall receive state-mandated support of up to a maximum of \$3.50; provided, however, that resale ETPs operating in the ILEC service areas of the Settling ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(C) of this subsection.

(D) (No change.)

(g) Obligations of the customer and the Lifeline provider.

(1) (No change.)

(2) Obligations of Lifeline providers.

(A) (No change.)

(B) Tariff Requirement. Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) - (E) (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 August 15, 2008

TRD-200804405

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

#### 16 TAC §75.80

The Texas Department of Licensing and Regulation ("Department") proposes amendments to 16 TAC §75.80, regarding the Air Conditioning and Refrigeration program fees for technicians.

The Department and its governing body, the Texas Commission of Licensing and Regulation ("Commission"), establish fees for programs regulated by the Department. These program fees include a revised or duplicate fee for licenses and registrations that need to be updated or replaced. The revised or duplicate fee is usually less than, but in some cases the same as, the original or renewal application fees. The revised or duplicate fee for most licenses and registrations is \$25.

The amendments to §75.80 propose to establish a \$15 revised or duplicate fee for both technician registrations and technician certifications. The fee is less than the usual \$25 revised or duplicate fee, because the original and renewal application fees for technician registrations is \$20, and the original application fee for technician certifications is \$15. The original and renewal application fees for technicians are lower than the original and renewal application fees for other licenses and registrations, which have the \$25 revised or duplicate fee.

The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering the programs under its jurisdiction. The proposed revised or duplicate fee for technicians is sufficient to cover the costs and not adversely affect the administration and enforcement of the Air Conditioning and Refrigeration program.

In addition to adding the new duplicate or revised fee, the amendments also modify the structure of the rule to separate fees for contractors, technicians, and certificates of registration for refrigerants into distinct subsections. The amendments also clarify that all application fees are non-refundable.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit

will be a duplicate or revised fee that is commensurate with the original and renewal application fees, but is sufficient to cover the costs of administering the program.

There are approximately 11,000 technicians who are currently registered with the Department, all of whom would be considered micro-businesses under Texas Government Code, Chapter 2006. The anticipated economic effect on the technicians, who are required to comply with the rule as amended, will be the payment of a \$15 revised or duplicate fee, but only in cases where the registration or certification needs to be updated or replaced. The Department anticipates that this revised or duplicate fee will affect only a small percentage of the technicians. While the fee will have an economic impact on those technicians that need a revised or duplicate registration or certification, the Department is authorized to set fees under Texas Occupations Code, Chapters 51 and 1302, and the fee is necessary to cover the Department's costs of issuing a revised or duplicate registration or certification.

Under Texas Government Code, Chapter 2006, the Department is required to consider alternative regulatory methods if they would be consistent with the health, safety, and environmental and economic welfare of the state. The Department has determined that there is not an alternative method to achieving the purpose of the proposed rule. Registrations are required to protect the public's health, safety and welfare, since technicians will be entering customer's homes to perform air conditioning and refrigeration maintenance work. While the registration is necessary to protect the public and the fee is necessary to cover the Department's costs, the Department has taken steps to minimize the adverse economic impact on technicians. The fee has been set to be commensurate with, and not in excess of, the original and renewal application fees for technicians. The fee is lower than the duplicate or revised fees for other program licenses and registrations, which have higher original and renewal application fees.

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

The amendments are proposed under Texas Occupations Code, Chapter 1302 and Chapter 51, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 1302 and Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§75.80. *Fees.*

- (a) All application fees are non-refundable.
- (b) Air Conditioning and Refrigeration Contractors.

(1) Contractor [~~Non-refundable contractor~~] license application fee is \$115.

(2) [~~(b)~~] Contractor examination fee is \$90 for each examination requested.

(3) [~~(e)~~] Contractor license renewal application fee is \$65.

(4) ~~[(d)]~~ Revised ~~[Issuance of a revised]~~ or duplicate ~~contractor license application fee [or certificate]~~ is \$25.

(5) ~~[(e)]~~ The application fee for adding an ~~[An]~~ endorsement to an existing contractor license is \$25.

(c) ~~[(f)]~~ Certificate of Registration for the Sale and Use of Refrigerants. ~~[application fee for persons involved in the sale and use of refrigerants is \$25.]~~

(1) Certificate of registration application fee is \$25.

(2) Revised or duplicate certificate of registration application fee is \$25.

(d) Air Conditioning and Refrigeration Technicians.

(1) ~~[(g)]~~ Technician registration application [and registration renewal] fee is \$20.

(2) Technician registration renewal application fee is \$20.

(3) ~~[(h)]~~ Technician certification application fee is \$15.

(4) Revised or duplicate technician registration application fee is \$15.

(5) Revised or duplicate technician certification application fee is \$15.

(e) ~~[(i)]~~ Late renewal fees for licenses and registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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 August 18, 2008.

TRD-200804433

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 28, 2008

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



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

##### SUBCHAPTER E. EMPLOYEE SCHOLARSHIPS

###### 19 TAC §§1.116 - 1.120

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

The Texas Higher Education Coordinating Board proposes the repeal of §§1.116 - 1.120 concerning Employee Scholarships. Specifically the repeal is proposed to make administration of the program less cumbersome. An agency policy will replace the rules.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis 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 repealing these sections will be greater efficiency by administering the Employee Scholarship Program through an agency policy rather than through rule. 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 Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465 or lois.hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the State Employees Training Act, Texas Government Code, §§656.041 - 656.105, which governs the eligibility of employees for participation in the program and the operation of the program.

The repeal affects §§656.041 - 656.105 of the State Employees Training Act.

§1.116. *Authority and Purpose.*

§1.117. *Definitions.*

§1.118. *Eligibility.*

§1.119. *Scope of Assistance.*

§1.120. *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 August 15, 2008.

TRD-200804403

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 23, 2008

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



## TITLE 22. EXAMINING BOARDS

### PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

#### CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

###### 22 TAC §141.10

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) proposes an amendment to

§141.10, concerning the licensing and regulation of fitters and dispensers of hearing instruments.

#### BACKGROUND AND PURPOSE

Amendments to §141.10 relate to licensure by reciprocity. The amendments are proposed to clarify requirements and procedures for persons who are licensed as a fitter and dispenser of hearing instruments in another state or territory, and who wish to become licensed as a fitter and dispenser of hearing instruments in Texas.

#### SECTION SUMMARY

Amendments to §141.10 establish specific procedures and requirements for applicants for licensure by reciprocity. The new provisions address requirements concerning the application form, verification of licensure in another state or territory, examination requirements and procedures, disciplinary actions and criminal convictions in another state or territory, and procedures for reciprocity applicants who are licensed audiologists.

#### FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each fiscal year of the first five years the section is in effect, there will be no fiscal implications to the state as a result of enforcing or administering the section as proposed. Implementation of the proposed section will not result in any fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Parsons has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. Currently, applicants for licensure by reciprocity must pay applicable fees; and the amendments do not impose additional fees. There is no anticipated impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for micro-businesses and small businesses are not required.

#### PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing and administering the section is to effectively regulate the practice of fitting and dispensing of hearing instruments in Texas, which will protect and promote public health, safety, and welfare.

#### REGULATORY ANALYSIS

The committee has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Mail Code 1982, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-3947 or by email to fdhi@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Occupations Code, §402.102, which authorizes the committee to adopt rules necessary for the performance of the committee's duties.

The proposed amendment affects the Texas Occupations Code, Chapter 402.

#### §141.10. *Licensure by Reciprocity.*

(a) A licensed fitter and dispenser of hearing instruments from another state or territory may apply for licensure by reciprocity. Applications for licensure by reciprocity shall be considered by the committee.

(b) The applicant must complete the application form completely and accurately. Failure to provide the information required on the application form and the information described in this section shall result in a notice of deficiency that explains the additional information that must be submitted before the application may be reviewed by the committee. Only completed applications will be submitted to the committee for consideration.

(c) The committee shall recognize the licensing requirements of the applicant's state or territory as meeting the requirements of the Act if the applicant:

(1) provides written verification that the applicant is currently a fully licensed fitter and dispenser of hearing instruments in another state or territory and has held the license for at least three years prior to the date of application;

(2) provides written verification that the licensing requirements of the jurisdiction under which the applicant is licensed requires passing of the International Licensing Examination for Hearing Instrument Dispenser (ILE) written examination or that the applicant holds a current certification issued by the Board of Certification for Hearing Instrument Sciences (BC-HIS); and

(3) takes and passes the practical section of the examination referenced in §141.15(c) of this title (relating to Examination), and a written examination of Texas law administered by the committee. The practical examination and written examination of Texas law must be taken at the next regularly scheduled examination held after the committee approves the application.

(d) An applicant who has not satisfied all of the requirements in subsections (a) - (c) of this section shall be required to complete and

pass the written and practical sections of the examination referenced in §141.15(c) of this title to fulfill the requirement in subsection (c) of this section.

(e) An applicant for licensure by reciprocity who fails an examination may request in writing, within 30 days of notification of failure, that the committee furnish the applicant with an analysis of the applicant's performance on the examination.

(f) An applicant for licensure by reciprocity who fails an examination shall not be approved for a subsequent examination. The person must comply with the requirements and procedures for obtaining a temporary training permit and an apprentice permit as described in §141.8 of this title (relating to Issuance of Permits).

(g) An applicant for licensure by reciprocity shall provide written verification from the licensing authority of any disciplinary action taken against the applicant during the time the applicant has been licensed. Upon review by the committee, an application may be denied due to disciplinary action taken against the applicant's license.

(h) An applicant for licensure by reciprocity shall provide written verification from the appropriate government agency if the applicant has been convicted of a crime or is on parole, probation, or community supervision in another state or territory.

(i) The committee shall not issue a license by reciprocity to a person who is a licensed audiologist from another state or territory. Such applicants shall be referred to the State Board of Examiners for Speech-Language Pathology and Audiology for licensure as an audiologist under Texas Occupations Code, Chapter 401. [In determining whether the licensing requirements of another jurisdiction are equal to or greater than the licensing requirements of the Act, the following criteria shall be considered by the committee:]

- {(1) written examination;}
- {(2) practical examination;}
- {(3) temporary training permit; and}
- {(4) apprentice permit.}

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 August 13, 2008.

TRD-200804371

Ron Ensweiler  
Chair

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 458-7111 x6972



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of existing §§37.111 -

37.119 and proposes new §§37.111 - 37.119 concerning the Hemophilia Assistance Program (HAP).

#### **BACKGROUND AND PURPOSE**

The proposed repeal and new rules will reorganize and update information, delete and revise language, and make grammatical corrections to improve flow, accuracy, and clarity.

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). Sections 37.111 - 37.119 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

#### **SECTION-BY-SECTION SUMMARY**

The following changes to names and addresses have been made throughout §§37.111 - 37.119. References to legacy agencies, now part of the Health and Human Services Commission, have been amended to reflect the department's name change from "Texas Department of Health" to "Department of State Health Services," and references to the "Board of Health" have been deleted.

The proposed new §37.111 groups the terms "purpose," "confidentiality of information," and "forms" together.

The proposed new §37.112 includes new definitions for terms used with the rules.

The proposed new §37.113 clarifies the eligibility requirements, the application and eligibility dates, financial criteria, and residency requirements.

The proposed new §37.114 clarifies existing language, updates new language, and sets out conditions for benefits and limitations of the HAP.

The proposed new §37.115 clarifies provider enrollment criteria for the HAP, change of provider ownership requirements, the consequences for not continuing to meet the requirements, and provider limitations.

The proposed new §37.116 includes language for authorizations and claims processing, including filing deadlines.

The proposed new §37.117 includes language concerning rights and responsibilities for applicants, clients, providers, and participating providers.

The proposed new §37.118 includes language concerning modifications, suspensions, denials, and terminations for applicants, clients, providers, and participating providers.

The proposed new §37.119 clarifies the appeal process, describes the procedures for informal disposition of a complaint, and describes the procedures for an administrative review and fair hearing request.

#### **FISCAL NOTE**

Jann Melton-Kissel, RN, MBA, Director, Specialized Health Services Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of enforcing and administering the sections as proposed. The repeals and new sections are intended to clarify, update, and strengthen the subchapter, and are not anticipated to be controversial or have significant fiscal impact to the department or local government.



## MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses that are providers of HAP will be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

## ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Melton-Kissel has determined that the proposed changes have no adverse economic impact on small businesses. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

## PUBLIC BENEFIT

Ms. Melton-Kissel has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is improved accuracy and consistency in the rules, and more accurate interpretation of their intent. In addition, the new rules will allow the program to function more efficiently and effectively.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Alesia Brown, Purchased Health Services Unit, MC 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, by telephone at (512) 458-7111, extension 3664, or by email to alesia.brown@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## SUBCHAPTER F. HEMOPHILIA ASSISTANCE PROGRAM

### 25 TAC §§37.111 - 37.119

*(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The proposed repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§37.111. *General.*

§37.112. *Recipient Requirements.*

§37.113. *Residency and Residency Documentation Requirements.*

§37.114. *Applications and Eligibility Date.*

§37.115. *Financial Criteria.*

§37.116. *Limitations and Benefits Provided.*

§37.117. *Participating Providers.*

§37.118. *Forms.*

§37.119. *Confidentiality of 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 August 18, 2008.

TRD-200804425

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 458-7111 x6972



### 25 TAC §§37.111 - 37.119

#### STATUTORY AUTHORITY

The proposed new sections are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The proposed new sections affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§37.111. General Information.

(a) Purpose. The purpose of this chapter is to establish rules for the Hemophilia Assistance Program (HAP). The authority for these rules is granted in the Health and Safety Code, Chapter 41.

(b) Confidentiality of Information.

(1) All information submitted, as required by this chapter, may be verified at the discretion of the Department of State Health Services (department) with or without notice to the applicant or client of benefits of the HAP, or to the providers of HAP services. Information required by this chapter and received by the department is kept confidential to the extent authorized by law.

(2) Information may be disclosed in summary, statistical, or other forms that do not identify particular individuals.

(c) Forms that have been developed by the department for use in the HAP will be provided to applicants, clients, and providers.

§37.112. Definitions.

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

(1) Administrative review--A process that allows applicants or clients the opportunity to request an informal review of any intended HAP action that would suspend, modify, deny, or terminate their eligibility for benefits participation in the HAP or reimbursement for allowable products.

(2) Allowable products--Blood derivatives, blood concentrates, and manufactured pharmaceutical products indicated for the treatment of hemophilia and approved for payment by the HAP.

(3) Applicant--An individual whose application has been submitted, but HAP has not made a final determination of eligibility. This includes an individual whose application is submitted by a representative or person with legal authority to act for the individual.

(4) Client--A person who has applied for program services and who meets all HAP eligibility requirements and is determined to be eligible for program services.

(5) Commission--The Health and Human Services Commission (HHSC).

(6) Date of service (DOS)--The date the allowable products are dispensed.

(7) Department--Department of State Health Services.

(8) Effective date--The initial date of eligibility for a HAP client.

(9) Fair hearing--The informal hearing process the department follows under 25 Texas Administrative Code (TAC), §§1.51 - 1.55 (relating to Fair Hearing Procedures).

(10) Federal Poverty Level guidelines (FPL)--The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor agency/agencies. FPL vary according to family size, and after adjustment for inflation, are published annually in the *Federal Register*.

(11) Filing deadline--The last date that a claim may be received by the HAP and still be considered for benefits eligibility.

(12) Hemophilia Assistance Program (HAP)--A program funded by the State of Texas that provides limited financial assistance to persons age 21 and older who have been diagnosed with hemophilia

and meet other program eligibility requirements for blood derivatives, blood concentrates, and manufactured pharmaceutical products that are administered or dispensed by program-approved providers.

(13) Hemophilia--A human physical condition characterized by bleeding, resulting from a genetically determined deficiency of a blood coagulation factor or an abnormal or deficient plasma procoagulant that prevents the blood from clotting properly. The diagnoses covered by the HAP include:

- (A) congenital factor VIII disorder (Hemophilia A);
- (B) congenital factor IX disorder (Hemophilia B); and
- (C) congenital factor XI disorder (Hemophilia C).

(14) Inhibitor--A type of antibody that requires the use of higher doses of blood factor to contain a bleeding episode.

(15) Provider--Any individual or entity approved by the HAP to provide allowable products to HAP clients.

(16) Physician--An individual licensed by the Texas Medical Board to practice medicine in the State of Texas.

(17) Reimbursement--Payment of a claim for allowable products administered or dispensed to a HAP client submitted by a provider.

(18) Reimbursement rate--The HAP payment rate for allowable products, determined annually for the following fiscal year based on the current year's Texas Medicaid Program reimbursement rate.

§37.113. Eligibility.

(a) Client Requirements. A person shall meet all of the following requirements to be eligible for benefits from the HAP:

- (1) have a diagnosis of hemophilia certified by a physician;
- (2) be 21 years of age or older;
- (3) be a resident of Texas as specified in subsection (d) of this section and not be:

(A) incarcerated in a city, county, state, or federal jail, or prison; or

(B) a ward of the state.

(4) submit a complete application for benefits to the HAP;

(5) satisfy the financial criteria as specified in subsection (c) of this section, including any person or persons who have a legal obligation to support the client; and

(6) the applicant must not be eligible for Children with Special Needs Services Program, the Texas Medicaid Program, or Medicare.

(b) Applications and Eligibility Dates.

(1) Persons meeting the eligibility requirements set forth in subsection (a) of this section must submit a complete application in order to receive benefits through the HAP.

(2) An eligibility determination will be made upon receipt of a complete application, which shall consist of all of the following:

(A) a complete Application for Assistance Form, with the applicant's, or the applicant's representative's, and physician's original signatures or "mark";

(B) documentation of Texas residency as specified in subsection (d) of this section; and

(C) documentation of income as specified in subsection (c) of this section.

(3) Any application which does not meet all of the requirements of paragraph (2) of this subsection is incomplete and shall be returned to the submitting person for correction or completion if the missing information is not otherwise provided.

(4) The HAP eligibility date for HAP benefits will be either:

(A) the date the HAP receives a completed application;

or

(B) the date of conditional authorization for allowable products, if all written information to establish eligibility is received within 30 calendar days following the date of conditional authorization.

(5) If HAP benefits are terminated, the eligibility date for any subsequent benefit period will be the date on which the HAP receives a subsequent completed application for HAP benefits or the date of conditional authorization for allowable products, if all written information to establish eligibility is received within 30 calendar days following the date of conditional authorization.

(6) All HAP clients are required to submit valid residency and income verification information as outlined in subsections (c) and (d) of this section upon request and at least annually, in order for the HAP to determine continuing program eligibility.

(7) The denial of any application submitted to the HAP shall be in writing and shall include the reason(s) for such denial. The applicant has the right of appeal as outlined in §37.119 of this title (relating to Right of Appeal).

(c) Financial Criteria.

(1) Income must be at or below 200% of the FPL.

(2) Acceptable income verification documentation as described in paragraph (3)(C) of this subsection shall be submitted with the application. Changes in income or financial qualifications that would affect the applicant's eligibility shall be reported to the HAP.

(3) Financial need is established on the basis of income available to the applicant and the person(s) who have a legal obligation to support the applicant. If the applicant and person(s) who have a legal obligation to support the applicant are unemployed, a statement(s) of termination from the employer(s), or other documentation acceptable to the HAP, is required.

(A) The income used to determine eligibility is the combined gross income of the applicant and of all persons who have a legal obligation to support the applicant.

(B) Income includes, but is not limited to:

(i) earned wages;

(ii) pensions;

(iii) allotments;

(iv) alimony; and

(v) any other monies received on a regular basis for support purposes.

(C) Income verification documentation includes:

(i) employer's written verification of gross monthly income;

(ii) the most recent pay check stub/monthly employee earnings statement;

(iii) Internal Revenue Service Income Tax Return forms for the most recently completed year;

(iv) pension/allotment award letters; or

(v) any other documents considered valid by the HAP.

(d) Residency Requirements.

(1) The following conditions shall be met by an applicant and maintained by a client to satisfy the residency requirements in this section:

(A) physically reside within the state; and

(B) maintain a home or abode within the state.

(2) If the applicant is a legal dependent of, and residing with, a person establishing residency on behalf of the applicant (such as a parent, a sibling, an adult child, or spouse), or if the applicant is a person under legal guardianship, then the person providing support or the legal guardian of the applicant must meet the requirements of paragraph (1) of this subsection.

(3) If the applicant is a parent residing with an adult child who meets the requirements of paragraph (1) of this subsection, residency may be established through the adult child.

(4) If the applicant is a parent being supported by an adult child, whether or not the child meets the requirements of paragraph (1) of this subsection, the parent applicant's residency may be established by the adult child's providing the required documents that establish the Texas residency of the parent applicant.

(5) The provisions of paragraphs (3) and (4) of this subsection apply, even if no legal guardianship has been established.

(6) An applicant who is currently a Texas resident and currently approved to receive benefits from Temporary Assistance for Needy Families (TANF) or Food Stamps is not required to provide additional residency verification.

(7) A person establishing residency on behalf of the applicant, who is currently a Texas resident and currently approved to receive benefits from Temporary Assistance for Needy Families (TANF) or Food Stamps, is not required to provide additional residency verification.

(8) An applicant or person establishing residency on behalf of the applicant, may submit a copy of any one of the following documents as evidence of residency. All documents shall be in the applicant's name or in the name of the person establishing residency for the applicant, and provide verification of a Texas address or domicile:

(A) a valid Texas driver license, or an identification card issued by the Texas Department of Public Safety;

(B) a valid Texas voter's registration card, or a copy of a validated (by a Texas county clerk's office) application for a voter's registration card;

(C) a current Texas motor vehicle registration or automobile license plate registration renewal form;

(D) a statement reflecting that the applicant is currently receiving rent-free housing. The statement must be signed by an individual responsible for providing the rent-free housing and must include the address and phone number of the individual or the organization providing the rent-free housing;

(E) a Texas property tax receipt for the most recently completed tax year; or

(F) any of the following documents, which must not be older than three months immediately preceding the applicant's signature date on the HAP application not including the application month:

- (i) a mortgage payment receipt;
- (ii) a rent payment receipt;
- (iii) a utility payment receipt;
- (iv) a dated payroll or retirement check;
- (v) prepared employment/unemployment records;
- (vi) an account statement from a financial institution;

(vii) Social Security supplemental income or disability income records, or Social Security retirement benefit records;  
or

(viii) any other documents deemed appropriate by the HAP.

(e) Legal Relationship. If the applicant's residency is established through the residency of another person, the following conditions must be met.

(1) The applicant must include documentation of the legal relationship between the applicant and the resident or person providing financial support, such as:

(A) a marriage license or declaration of non-ceremonial marriage to document the marriage of the applicant and spouse;

(B) a birth certificate establishing the parent-child relationship between the applicant and the resident; or

(C) an income tax return showing the name and relationship of the applicant to the resident.

(2) Any difference between the name of the applicant and the name on any document must be explained by additional documentation (example: marriage license, divorce decree, or adoption decree).

§37.114. Benefits and Limitations.

(a) The HAP provides limited reimbursement to providers for blood derivatives, blood concentrates, and manufactured pharmaceutical products indicated for the treatment of hemophilia and prescribed to eligible clients for use in medical or dental facilities, or in the home.

(b) All HAP benefits are limited to those allowable products prescribed by a physician and received in Texas from a provider.

(c) The HAP will pay for allowable products based upon:

(1) available funds;

(2) established limits for allowable products by type or category of product; and

(3) the reimbursement rates established by the department.

(d) Eligible clients with a private or group health insurance must exhaust all benefits prior to receiving benefits from the HAP.

(e) The HAP is payer of last resort. Applicants and currently eligible HAP clients are no longer eligible when they become eligible for the Children with Special Health Care Needs (CSHCN) Services Program, the Texas Medicaid Program, or Medicare.

(f) To meet budgetary limitations, the department may:

(1) adjust the reimbursement rates established by the department;

(2) restrict the allowable products paid for under the HAP;

(3) adjust the established limits for allowable products;

(4) adjust the limits established based on the inhibitor status of the client or applicant;

(5) limit the number of providers approved to participate in the HAP; or

(6) establish a waiting list of persons eligible for the HAP. Appropriate information will be collected from each applicant who is placed on a waiting list. The information will be used to facilitate contacting the applicant and to allow efficient enrollment of the applicant when benefits become available. Eligibility must be maintained while on the waiting list.

§37.115. Providers.

(a) Applicable provider types for the HAP include, but are not limited to:

(1) pharmacies;

(2) hospitals; or

(3) blood banks.

(b) In order for a provider to qualify for participation and to enroll in the HAP, the provider shall meet the following criteria:

(1) enter into an agreement to participate in the HAP;

(2) submit a completed HAP provider enrollment form to the HAP;

(3) submit a completed department Child Support Certification form to the HAP;

(4) be a current Texas Medicaid Program provider;

(5) reimburse the HAP for any overpayments made to the provider by the HAP upon request;

(6) not currently be on suspension as a HAP provider or as a Texas Medicaid Program provider;

(7) accept the payment amount authorized by the HAP as payment in full; and

(8) comply with provisions of the most current HAP Provider Manual.

(c) Changes in provider ownership require termination of the agreement to participate. A new agreement must be executed under the new ownership.

(d) The HAP may establish provider enrollment limitations in order to conserve funds, assure quality, and effectively administer the program.

(e) The HAP may modify, suspend, deny, or terminate a provider's approval to participate for the following reasons:

(1) submission of false or fraudulent claims;

(2) failure to provide and maintain quality services;

(3) failure to adhere to medically acceptable standards;

(4) breach of the provider agreement;

(5) disenrollment as a Texas Medicaid Program provider;

or

(6) violation of the requirements of this chapter.

§37.116. Payment.

(a) Prior Authorization.

(1) Prior authorization is required for all allowable products.

(2) The HAP will grant conditional prior authorization for applicants who begin or are in the process of acquiring eligibility for the HAP. Providers must notify the HAP within five working days from the date of service.

(b) The HAP reimburses providers for allowable product(s) for eligible clients. Payment may be made only after the allowable product(s) has been dispensed and submission of a valid claim. Claims must meet the following criteria:

- (1) be submitted on the claim form accepted by the HAP;
- (2) be submitted by a HAP provider; and
- (3) be filed directly with the HAP.

(c) Filing Deadlines.

(1) Complete claims must be received by the HAP within 95 calendar days following the date of service.

(2) Incomplete and rejected claims will be denied.

(3) Denied claims may be considered for payment if the claim is corrected and resubmitted within 30 calendar days following the date of the HAP notice of denial or within the initial 95 calendar day filing deadline, whichever is later.

(d) Claims for products or services not allowed or covered by this chapter or for products provided to ineligible clients will not be reimbursed.

(e) The HAP is the payer of last resort. Applicants and currently eligible HAP clients are not eligible when they become eligible for CSHCN Services Program, Texas Medicaid Program or Medicare.

(f) The HAP reimbursement provides for only those products determined allowable by the HAP.

(g) Claims received by the HAP will be paid, rejected, or denied within 30 calendar days of receipt by the HAP.

§37.117. Rights and Responsibilities.

(a) Rights.

(1) The applicant and client shall have the right to:

- (A) apply for eligibility determination;
- (B) choose providers subject to the HAP limitations;
- (C) be notified of the HAP decisions relating to modifications, suspensions, denials, or terminations;

(D) appeal the HAP decision and receive a response within the deadline as described in §37.119 of this title (relating to Right of Appeal); and

(E) have confidentiality of information in the manner and to the extent authorized by law.

(2) The provider shall have the right to:

- (A) apply and enroll as a provider;
- (B) be notified of the HAP decision relating to modifications, suspensions, denials, or terminations; and

(C) have confidentiality of information in the manner and to the extent authorized by law.

(b) Responsibilities.

(1) The applicant and client shall have the responsibility to:

(A) provide accurate medical information to providers and notify providers of HAP eligibility prior to delivery of services;

(B) provide the HAP with accurate information regarding any change of circumstance which might affect eligibility within 30 calendar days following such change; and

(C) notify the HAP of any lawsuit(s) contemplated or filed concerning the cause of the medical condition for which the HAP has made payment.

(2) The provider shall have the responsibility to:

(A) enroll as a HAP provider and submit a completed application to the HAP, including all documents requested;

(B) abide by the HAP rules and regulations;

(C) not discriminate against applicants or clients based on source of payment; and

(D) notify the HAP of any lawsuit(s) contemplated or filed concerning the cause of the medical condition for which the HAP has made payment.

§37.118. Modifications, Suspensions, Denials and Terminations.

(a) Any applicant or client shall be notified in writing of the action, the reason(s) for the action, and the right of appeal in accordance with §37.119 of this title (relating to Right of Appeal), if the HAP proposes to modify, suspend, deny, or terminate eligibility or benefits for reasons, which include but are not limited to the following:

(1) the application or other requested information is erroneous or falsified;

(2) financial eligibility requirements are not met;

(3) failure to establish or maintain Texas residency;

(4) financial and/or residency documentation is not provided as required or requested;

(5) failure to provide information when requested;

(6) client is or becomes incarcerated in a city, county, state, or federal jail, or prison;

(7) client is or becomes a ward of the state;

(8) failure to receive allowable products through a provider; or

(9) failure to continue premium payments on individual or group insurance or prepaid medical plans, where such plans provide benefits for the care and treatment of persons who have hemophilia and eligibility for benefits under the plan(s) was effective prior to eligibility for the HAP, and failure to provide a statement on the application form outlining the reason(s) why such insurance cannot be maintained.

(b) When eligibility for HAP benefits is terminated, an applicant or client may reapply for the HAP benefit.

(c) Any provider shall be notified in writing, if the HAP modifies, suspends, denies, or terminates a client's benefits or provider's enrollment. The written notification shall include the reason(s) for the action. The reasons for modifying, suspending, denying, or terminating a provider's enrollment include but are not limited to:

(1) failure to maintain required current licensures or certifications in the State of Texas;

(2) failure to maintain status as a Texas Medicaid Program provider;

- (3) failure to have a current HAP provider agreement on file;
- (4) failure to submit a completed department Child Support Certification form on file;
- (5) failure to notify the HAP of change of ownership;
- (6) failure to comply with all the provisions of the HAP provider agreement and the Provider Manual; or
- (7) reduction or curtailment in funds available for the HAP.

§37.119. Right of Appeal.

- (a) Appeal procedures for applicants, and clients.

- (1) Administrative Review.

(A) If the HAP intends to modify, suspend, deny, or terminate benefits, the HAP shall give written notice of the reason and the right to request an administrative review of the denial within 30 calendar days following the date of the denial notice.

(B) If a written request for administrative review is not received by the HAP within the 30 calendar days following the date of the denial notice, the HAP will presume the administrative review process has been waived, and the HAP proposed action shall be final.

(C) If a written request for administrative review is received within 30 calendar days following the date of the denial notice, the HAP will conduct an administrative review of the circumstances on which the proposed modification, suspension, denial, or termination is based and give written notice of the HAP decision including the supporting reasons within 10 calendar days of receipt of the request for an administrative review.

(2) The Commission establishes the Texas Medicaid Program reimbursement rate upon which the HAP bases its reimbursement rate(s). Clients may not request an administrative review and may not appeal prior authorization decisions and reimbursement amounts for claims that are paid in accordance with the reimbursement rate as defined in §37.112(18) of this title (relating to Definitions).

- (b) Fair Hearing.

(1) Applicants, and clients who are dissatisfied with a HAP administrative review decision and/or supporting reasons may request a fair hearing in writing addressed to the Hemophilia Assistance Program, Purchased Health Services Unit MC 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, within 20 calendar days following the date of receipt of the administrative review decision notice.

(2) If the request for a fair hearing is not received within 20 calendar days following the date of the receipt of the administrative review decision notice, the HAP will presume the fair hearing process has been waived, and the HAP may take final action.

(3) A fair hearing shall be conducted in accordance with §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

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 August 18, 2008.  
TRD-200804426

Lisa Hernandez  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: September 28, 2008  
For further information, please call: (512) 458-7111 x6972

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## CHAPTER 289. RADIATION CONTROL

### SUBCHAPTER D. GENERAL

#### 25 TAC §289.201, §289.202

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 25 TAC §289.202(ggg)(2)(F) is not included in the print version of the Texas Register. The figure is available in the on-line edition of the August 29, 2008, issue of the Texas Register.)*

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §289.201, concerning general provisions for radioactive material, and an amendment to §289.202, concerning standards for protection against radiation from radioactive materials.

#### BACKGROUND AND PURPOSE

The amendment to §289.201 corrects references, revises the definition of byproduct material, clarifies the definition of radiation safety officer, and adds definitions for discrete source and waste as required for compatibility with the U.S. Nuclear Regulatory Commission (NRC). Clarification is made in the rule for records of receipt, transfer, and disposal of sources of radiation, and a time frame is added for action to be taken for a radioactive sealed source that has been determined to be leaking. The address included for communications, reports, and applications has been updated.

The amendment to §289.202 is necessary for compatibility with the NRC. Texas, as an agreement state, must maintain rules that are compatible with NRC rules. These changes include clarification for the use of deep-dose equivalent and effective dose equivalent in determining occupational dose limits, and a requirement that portable gauge licensees use a minimum of two independent physical controls to secure gauges whenever they are not under the control and constant surveillance of the licensee. Clarification is added for waste disposal at approved facilities to be consistent with the new definition of byproduct material being proposed in §289.201 of this title. References to uranium rules are being deleted as a result of Senate Bill (SB) 1604, 80th Legislature, 2007, amending Health and Safety Code, §401.011, which transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the Texas Commission on Environmental Quality (TCEQ). The elements, nitrogen and oxygen, are added to the list of elements and the table of values for annual intake for reasons of NRC compatibility. The date for submission to the NRC of the initial inventory for the National Source Tracking System is being changed based on compatibility with the NRC.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.201 and 289.202

have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

#### SECTION-BY-SECTION SUMMARY

The reference to the table listed in §289.201(b)(9)(A) has been revised. The definition of byproduct material in §289.201(b)(15) has been revised in order to maintain compatibility with the NRC. The definition of discrete source in §289.201(b)(28) is added in order to maintain compatibility with the NRC. Section 289.201(b)(71) corrects the reference to the Texas Medical Board. Section 289.201(b)(80) has information added to the definition of radiation safety officer in order to clarify citations specific to training and responsibilities for radiation safety officers. A typographical correction is made in §289.201(b)(99). The definition of total effective dose equivalent in §289.201(b)(109) has been changed in order to maintain compatibility with the NRC. Rule reference corrections have been made in §289.201(b)(112). The definition of waste has been added in §289.201(b)(118) in order to maintain compatibility with the NRC. In §289.201(d)(1)(A)(iii) and (iv), references to "person" have been changed to "licensee" for clarification purposes. Section 289.201(g)(6) adds clarification that a leaking sealed source must be repaired or transferred within two years, and equipment associated with a leaking source must also be checked for contamination. Both clarifications are made in order to maintain compatibility with the NRC. Section 289.201(k)(1) corrects the agency address.

Section 289.202(f)(3) clarifies that the deep-dose equivalent must be used in place of the effective dose equivalent if external exposure is determined by measurement with an external personal monitoring device, in order to maintain compatibility with the NRC. Section 289.202(p)(2)(E) clarifies details associated with the determination of the accuracy of instruments and equipment used for quantitative radiation measurements. Section 289.202(y)(3) adds security requirements for portable gauges in order to maintain compatibility with the NRC.

References to rules regarding uranium and licensing of radioactive waste processing and storage facilities are removed in §289.202(ff)(1)(A), §289.202(ccc)(2), §289.202(ddd)(1)(A), and §289.202(fff)(4) as a result of SB 1604, 80th Legislature, 2007, amending Health and Safety Code, §401.011, which transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the TCEQ. Waste shipping requirements are added in §289.202(ff)(4), (5) and (6), in order to maintain compatibility with the NRC. References are corrected in §289.202(j)(4), §289.202(ll)(4), §289.202(eee)(2)(A), and §289.202(fff)(9). The elements, nitrogen and oxygen, are added to §289.202(ggg)(2)(E) in order to maintain compatibility with the NRC. A date correction is made in §289.202(hhh)(1)(H) in order to maintain compatibility with the NRC.

#### FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that these sections are in effect, there will be no fiscal implications to the state or local government as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there could not be an adverse economic effect on small businesses or micro-busi-

nesses required to comply with §289.201 as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with §289.201 as proposed. Regarding §289.202, there will be anticipated economic costs to persons required to comply with this proposed section, including small businesses. The only small businesses impacted by the amendment are those that are licensed to possess portable gauges and must leave them without the licensee's control and constant surveillance. A maximum of 234 licensees out of a total of approximately 1,600 are small businesses that could be affected financially from the amendment of §289.202. Of these 234 licensees, approximately over half are micro-businesses. The rule is not prescriptive and, therefore, each licensee has choices on how to meet the requirements of the rule. These choices range in cost from using simple chains and locks for a total of approximately \$40 per gauge to the purchase of a very large double locking tool box at a cost of approximately \$800 per gauge. Additionally the licensee can choose to employ a second person to maintain constant surveillance of the gauge at an approximate cost of \$25 per hour rate. The number of hours that the additional employee would be required to maintain constant surveillance of the gauge would vary depending on the circumstances of the assigned job and the required use of the portable gauge. There is no anticipated negative impact on local employment from either proposed rule.

#### REGULATORY FLEXIBILITY ANALYSIS

Prior to the development of the amendment of §289.202, ideas were reviewed to determine if there were alternative ways to ensure the security of the radioactive sources housed in portable gauges. Texas as an agreement state, must maintain rules that are compatible with NRC rules. Because this requirement is an item of compatibility with the NRC, alternatives were limited. The compatibility requirement of this rule provides that Texas may be the same as or more restrictive than the federal government, but not less restrictive. Based on this, the department has determined that the rule would have to be required of all portable gauge licensees including small and micro-businesses. The rule is flexible in that it is not prescriptive, and each licensee is able to determine the method of security that best suits their operations.

#### PUBLIC BENEFIT

Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering §289.201 and §289.202 is to ensure the security of radioactive material, and to prevent it from falling into the hands of unlicensed and potentially terrorist individuals.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, MC 1987, P.O. Box 149347, Austin, TX 78717-9347, (512) 834-6770, extension 2239, or by email to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*, and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Group website ([www.dshs.state.tx.us/radiation](http://www.dshs.state.tx.us/radiation)). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or Cindy.Cardwell@dshs.state.tx.us if you have questions.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.201. *General Provisions for Radioactive Material.*

(a) (No change.)

(b) 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) Agency--The Department of State Health Services [~~Texas Department of Health~~].

(7) - (8) (No change.)

(9) Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I, Column 3 [~~Column 4~~] of §289.202(gg)(2)(F) of

this title (relating to Standards for Protection Against Radiation from Radioactive Materials); or

(B) (No change.)

(10) - (14) (No change.)

(15) Byproduct material--Byproduct material is defined as:

(A) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; ~~and~~

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(C) any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) any material that has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the United States NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(16) - (27) (No change.)

(28) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(29) [~~28~~] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site, or, in the case of structures or equipment, in similar materials using adequate measurement technology, survey, and statistical techniques.

(30) [~~29~~] Distribution--The physical conveyance and authorized transfer of commodities from producers to consumers and any intermediate persons involved in that conveyance.

(31) [~~30~~] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of this chapter, "radiation dose" is an equivalent term.

(32) [~~31~~] Dose equivalent (H<sub>v</sub>)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(33) [~~32~~] Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.



(34) [(33)] Effective dose equivalent ( $H_E$ )--The sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ) [(HT)] and the weighting factor ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated ( $H_E = \sum w_T H_T$ ) [( $H_E = \sum w_T H_T$ )].

(35) [(34)] Embryo/fetus--The developing human organism from conception until the time of birth.

(36) [(35)] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed sources of radiation. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(37) [(36)] Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). The roentgen is the special unit of exposure. For purposes of this chapter, this term is used as a noun.

(38) [(37)] Exposure rate--The exposure per unit of time.

(39) [(38)] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(40) [(39)] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(41) [(40)] Generally applicable environmental radiation standards--Standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy [energy] Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(42) [(41)] Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (J/kg) or 100 rad.

(43) [(42)] High radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(44) [(43)] Human use--The internal or external administration of radiation or radioactive material to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(45) [(44)] Individual--Any human being.

(46) [(45)] Individual monitoring--The assessment of:

(A) dose equivalent to an individual by the use of individual monitoring devices; or

(B) committed effective dose equivalent to an individual by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in §289.202(c) of this title); or

(C) dose equivalent to an individual by the use of survey data.

(47) [(46)] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this chapter, "personnel dosimeter" and

"dosimeter" are equivalent terms. Examples of individual monitoring devices include, but are not limited to, film badges, thermoluminescence dosimeters (TLDs), optically stimulated luminescence dosimeters (OSLs), pocket ionization chambers (pocket dosimeters), electronic personal dosimeters, and personal air sampling devices.

(48) [(47)] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(49) [(48)] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(50) [(49)] Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high-speed electrons, neutrons, and other nuclear particles.

(51) [(50)] Land disposal facility--The land, buildings, and equipment that are intended to be used for the disposal of low-level radioactive waste (LLRW) into the subsurface of the land.

(52) [(51)] Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm<sup>2</sup>).

(53) [(52)] License--A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(54) [(53)] Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(55) [(54)] Licensee--Any person who is licensed by the agency in accordance with the Act and this chapter.

(56) [(55)] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc. For the purposes of evaluation and/or distribution of sealed sources, this includes Licensing State Status: Product Review Only.

(57) [(56)] Lost or missing radioactive material--Radioactive material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(58) [(57)] Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted under the Texas Radiation Control Act (Act), Health and Safety Code, §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2 [Part 61.2]; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55 [Part 61.55], or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined by Title 10, CFR, §60.2 [Part 60.2];

(ii) spent nuclear fuel as defined by Title 10, CFR, §72.3 [Part 72.3];

(iii) byproduct material defined in the Act, Health and Safety Code, §401.003(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(59) [(58)] Manufacture--To fabricate or mechanically produce.

(60) [(59)] Member of the public--Any individual, except when that individual is receiving an occupational dose.

(61) [(60)] Minor--An individual less than 18 years of age.

(62) [(61)] Monitoring--The measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(63) [(62)] NARM--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(64) [(63)] Natural radioactivity--Radioactivity of naturally occurring nuclides whose location and chemical and physical form have not been altered by man.

(65) [(64)] NRC--The United States Nuclear Regulatory Commission [(NRC)] or its duly authorized representatives.

(66) [(65)] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, from voluntary participation in medical research programs, or as a member of the public.

(67) [(66)] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation at energies usually in excess of 1 MeV.

(68) [(67)] Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than NRC, and other than federal government agencies licensed or exempted by NRC.

(69) [(68)] Personnel monitoring equipment (See definition for individual monitoring devices.)

(70) [(69)] Pharmacist--An individual licensed by the Texas State Board of Pharmacy to compound and dispense drugs, prescriptions, and poisons.

(71) [(70)] Physician--An individual licensed by the Texas Medical Board [Texas State Board of Medical Examiners].

(72) [(71)] Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(73) [(72)] Public dose--The dose received by a member of the public from exposure to sources of radiation released by a licensee, or to any other source of radiation under the control of a licensee/registrant. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, or from voluntary participation in medical research programs.

(74) [(73)] Quality factor (Q)--The modifying factor listed in subsection (n)(1) and (2) of this section that is used to derive dose equivalent from absorbed dose.

(75) [(74)] Quarter (calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(76) [(75)] Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram (erg/g) or 0.01 J/kg (0.01 gray).

(77) [(76)] Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(78) [(77)] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 cm from the source of radiation or from any surface that the radiation penetrates.

(79) [(78)] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(80) [(79)] Radiation safety officer (RSO)--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who must be specifically authorized on a radioactive material license, and who is the primary contact with the agency. Specific training and responsibilities for an RSO are listed in §289.252 of this title (relating to Licensing of Radioactive Material), §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies), §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), and §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material).

(81) [(80)] Radioactive material--Any material (solid, liquid, or gas) that emits radiation spontaneously.

(82) [(81)] Radioactive waste--As used in §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), this term is equivalent to LLRW.

(83) [(82)] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(84) [(83)] Radiobioassay (See definition for bioassay.)

(85) [(84)] Registrant--Any person issued a certificate of registration by the agency in accordance with the Act and this chapter.

(86) [(85)] Regulation (See definition for rule.)

(87) [(86)] Regulations of the United States Department of Transportation (DOT)--The requirements in Title 49, CFR, Parts 100-189.

(88) [(87)] Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert (Sv)).

(89) [(88)] Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(90) [(89)] Residual radioactivity--The radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Title 30, Texas Administrative Code, §336.334.

(91) [(90)] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(92) [(91)] Roentgen (R)--The special unit of exposure. One roentgen (R) equals  $2.58 \times 10^{-4}$  C/kg of air. (See definition for exposure.)

(93) [(92)] Rule (as defined in the Government Code, Chapters 2001 and 2002, as amended)--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(94) [(93)] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(95) [(94)] Shallow dose equivalent ( $H_p$ ) (that applies to the external exposure of the skin or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 cm (7 mg/cm<sup>2</sup>) averaged over an area of 1 square centimeter (cm<sup>2</sup>).

(96) [(95)] SI--The abbreviation for the International System of Units.

(97) [(96)] Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv [ $S_v$ ] = 100 rem).

(98) [(97)] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(99) [(98)] Source material--Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight [right] 0.05% or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(100) [(99)] Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(101) [(100)] Special form radioactive material--Radioactive material that satisfies the following conditions.

(A) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(B) The piece or capsule has at least one dimension not less than 5 millimeters (mm) (0.2 inch); and

(C) It satisfies the requirements specified by NRC. A special form encapsulation designed in accordance with NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with NRC requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet the requirements of this definition applicable at the time of its design or construction.

(102) [(101)] Special nuclear material--Special nuclear material is defined as:

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that NRC, in accordance with the provisions of the Atomic Energy Act of 1954, §51 as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(103) [(102)] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams (g) of contained uranium-235; uranium-233 in quantities not exceeding 200 g; plutonium in quantities not exceeding 200 g; or any combination of them in accordance with the following formula.

(A) For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity).

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula:

Figure: 25 TAC §289.201(b)(103)(B)

[Figure: 25 TAC §289.201(b)(102)(B)]

(104) [(403)] Special units--The conventional units historically used by licensees, for example, curie (activity), rad (absorbed dose), and rem (dose equivalent).

(105) [(404)] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of sources of radiation. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of materials and equipment, measurements of levels of radiation or concentration of radioactive material present, and evaluation of administrative and/or engineered controls.

(106) [(405)] Termination--A release by the agency of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(107) [(406)] Test--A method of determining the characteristics or condition of sources of radiation or components thereof.

(108) [(407)] Texas Regulations for Control of Radiation (TRCR)--All sections of Title 25 Texas Administrative Code (TAC), Chapter 289.

(109) [(408)] Total effective dose equivalent (TEDE)--The sum of the effective dose [deep dose] equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(110) [(409)] Total organ dose equivalent (TODE)--The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §289.202(rr)(1)(F) of this title.

(111) [(410)] Transport index--The dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(A) For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour (mSv/hr) at 1 meter (m) (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour (mrem/hr) at 1 m (3.3 feet); or

(B) For fissile material packages, the number determined by multiplying the maximum radiation level in mSv/hr at 1 m (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in mrem/hr at 1 m (3.3 feet), or, for criticality control purposes, the number obtained as described in 10 CFR 71.59, whichever is larger.

(112) [(411)] Type A quantity--A quantity of radioactive material, the aggregate radioactivity of which does not exceed  $A_1$  for special form radioactive material or  $A_2$  for normal form radioactive material, where  $A_1$  and  $A_2$  are given in §289.257(ff) [§289.257(s)(2)] of this title (relating to Packaging and Transportation of Radioactive Material) or may be determined by procedures described in §289.257(ff) [§289.257(s)(1)-(4)] of this title.

(113) [(412)] Type B quantity--A quantity of radioactive material greater than a type A quantity.

(114) [(413)] Unrefined and unprocessed ore--Ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(115) [(414)] Unrestricted area (uncontrolled area)--An area, or access to, which is neither limited nor controlled by the licensee. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(116) [(415)] Very high radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at 1 meter (m) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, Sv and rem.

(117) [(416)] Veterinarian--An individual licensed by the Texas State Board of Veterinary Medical Examiners.

(118) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (15)(B) - (E) of this subsection.

(119) [(417)] Week--Seven consecutive days starting on Sunday.

(120) [(418)] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(121) [(419)] Worker--An individual engaged in work under a license or certificate of registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(122) [(420)] Working level (WL) [ $W_L$ ]--Any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are--for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(123) [(421)] Working level month (WLM)--An exposure to one working level for 170 hours - 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(124) [(422)] Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee may change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(c) (No change.)

(d) Records.

(1) Each licensee shall maintain records showing the receipt, transfer, and disposal of all non-exempt sources of radiation.

(A) Records of receipt, transfer, and disposal of sources of radiation shall include as a minimum, the following information:

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

(iii) for the licensee [person] transferring the source of radiation, the name of the transferee, the number of the transferee's

radioactive material license authorizing possession of the material, and the regulatory agency issuing the license to the transferee; and

(iv) for the licensee [person] receiving the source of radiation, the name of the transferor, the number of the transferor's radioactive material license authorizing possession of the material, and the regulatory agency issuing the license to the transferor.

(B) (No change.)

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

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

(g) Tests for leakage and/or contamination of sealed sources.

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

(6) The licensee shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. Within two years of the determination that a sealed source is leaking, the [The] leaking sealed source shall be repaired or transferred for disposal in accordance with §289.202 of this title. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of in accordance with §289.202 of this title.

(7) (No change.)

(h) - (j) (No change.)

(k) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to Radiation Control, Department of State Health Services [the Bureau of Radiation Control, Texas Department of Health], 1100 West 49th Street, P.O. Box 149347, Austin, Texas, 78714-9347 [78756-3189]. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) (No change.)

(l) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this chapter by any officer or employee of the agency other than a written interpretation by the Office of General Counsel, Department of State Health Services [Texas Department of Health], will be considered binding upon the agency.

(m) Open records.

(1) (No change.)

(2) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(A) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(i) (No change.)

(ii) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:

Figure: 25 TAC §289.201(m)(2)(A)(ii)

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

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

(n) - (o) (No change.)

§289.202. *Standards for Protection Against Radiation from Radioactive Materials.*

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

(f) Occupational dose limits for adults.

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

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the agency. The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters (cm<sup>2</sup>) of skin receiving the highest exposure.

(4) - (7) (No change.)

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

(j) Determination of occupational dose for the current year.

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

(4) If the licensee is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee, the licensee shall assume in establishing administrative controls in accordance with subsection (f)(7) [(f)(8)] of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 mrem (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

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

(k) - (o) (No change.)

(p) General surveys and monitoring.

(1) (No change.)

(2) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

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

(E) at an accuracy within 20% of the true radiation level, or inclusive of an appropriate efficiency associated with quantitative counting equipment.

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

(q) - (x) (No change.)

(y) Security and control of licensed sources of radiation.

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

(3) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(z) - (ee) (No change.)

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section, §289.252 of this title (relating to Licensing of Radioactive Material), [§289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities);] §289.257 of this title, §289.259 of this title, or to the United States Department of Energy (DOE);

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

(D) as authorized in accordance with paragraph (2) of this subsection, and subsections (gg), [and] (hh), and (ff) of this section.

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

(4) Licensed material as defined in §289.201(b)(15)(C) - (E) of this title may be disposed of in accordance with Title 10, CFR, Part 61, even though it is not defined as low level radioactive waste. Therefore, any licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under Title 10, CFR, Part 61, shall meet the requirements of this chapter.

(5) A licensee may dispose of byproduct material, as defined in §289.201(b)(15)(C) - (E) of this title, at a disposal facility authorized to dispose of such material in accordance with any Federal or State solid or hazardous waste law.

(6) Any licensee shipping byproduct material as defined in §289.201(b)(15)(C) - (E) of this title intended for ultimate disposal at a land disposal facility licensed under Title 10, CFR, Part 61, shall document the information required on the NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with §289.257(gg) of this title.

(gg) - (kk) (No change.)

(ll) General provisions for records.

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

(4) Records required in accordance with §289.201(d) of this title, and subsections (mm) - (oo) and (ss) - (uu) [~~(tt)~~, and ~~(uu)~~] of this section shall include the date and the identification of individual(s) making the record, and, as applicable, a unique identification of survey instrument(s) used, and an exact description of the location of the survey. Records of receipt, transfer, and disposal of sources of radiation shall uniquely identify the source of radiation.

(5) (No change.)

(mm) - (bbb) (No change.)

(ccc) Vacating premises.

(1) (No change.)

(2) The licensee or person possessing non-exempt radioactive material shall decommission the premises to a degree consistent with subsequent use as an unrestricted area and in accordance with the requirements of subsection (ddd) of this section [~~or, for uranium recovery and byproduct material disposal facilities licensed in accordance with §289.260 of this title, subsection (eee) of this section~~].

(ddd) Radiological requirements for license termination.

(1) General provisions and scope.

(A) The requirements in this section apply to the decommissioning of facilities licensed in accordance with §289.252 of this title [~~(relating to Licensing of Radioactive Material), §289.254 of~~

~~this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities)], §289.255 of this title [(relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography)], and §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators). [The requirements do not apply to uranium recovery and byproduct material disposal facilities already subject to the requirements of §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities).]~~

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

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

(eee) Limits for contamination of soil, surfaces of facilities and equipment, and vegetation.

(1) (No change.)

(2) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) subsection (ddd) [~~(ggg)(8)~~] of this section; or

(B) the effluent concentrations in Table II, Column 2 of subsection (ggg)(2)(F) of this section, with the units changed from microcuries per milliliter to microcuries per gram, for radionuclides not specified in [subsection (ggg)(8) of this section or] paragraph (4) of this subsection.

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

(fff) Exemption of specific wastes.

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

(4) Any licensee [~~except those licensed in accordance with §289.254 of this title,~~] may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (30 Texas Administrative Code Chapter 330), unless such licensed material also contains hazardous waste, as defined in §3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5) - (8) (No change.)

(9) Licensed material discarded under this section is exempt from the requirements of §289.252(ff) [~~§289.252(tt)~~] of this title.

(ggg) Appendices.

(1) (No change.)

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

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

(E) List of elements.

Figure: 25 TAC §289.202(ggg)(2)(E)  
~~[Figure: 25 TAC §289.202(ggg)(2)(E)]~~

(F) Tables--Values for annual limits. The following tables contain values for annual limits on intake (ALI) and derived air

concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage: Figure: 25 TAC §289.202(ggg)(2)(F)  
[Figure: 25 TAC §289.202(ggg)(2)(F)]

(3) - (7) (No change.)

~~[(8) Soil contamination limits for selected radionuclides (for use in subsection (eee) of this section).]  
[Figure: 25 TAC §289.202(ggg)(8)]~~

(8) ~~[(9)]~~ Cumulative occupational exposure form. The following, BRC Form 202-2, is to be used to document cumulative occupational exposure history: (Please find BRC Form 202-2 at the end of this section.)

Figure: 25 TAC §289.202(ggg)(8)  
[Figure: 25 TAC §289.202(ggg)(9)]

(9) ~~[(10)]~~ Occupational exposure form. The following, BRC Form 202-3, is to be used to document occupational exposure record for a monitoring period: (Please find BRC Form 202-3 at the end of this section.)

Figure: 25 TAC §289.202(ggg)(9)  
[Figure: 25 TAC §289.202(ggg)(10)]

(hhh) Requirements for nationally tracked sources.

(1) Reports of transactions involving nationally tracked sources. Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report as specified in the following subparagraphs for each type of transaction.

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

(H) Each licensee that possesses Category 1 nationally tracked sources listed in paragraph (2) of this subsection shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by January 31, 2009 ~~[November 15, 2007]~~. Each licensee that possesses Category 2 nationally tracked sources listed in paragraph (2) of this subsection shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009 ~~[November 30, 2007]~~. The information may be submitted to NRC by using any of the methods identified by subparagraph (F)(i) through (iv) of this paragraph. The initial inventory report shall include the following information:

(i) - (vi) (No change.)

(2) - (3) (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 August 13, 2008.

TRD-200804370

Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER H. CIGAR AND TOBACCO TAX

### 34 TAC §3.121

The Comptroller of Public Accounts proposes an amendment to §3.121, concerning definitions, imposition of tax, permits, and reports. Subsections (a)(9) and (a)(11) are amended to clarify the terms "manufacturer" and "manufacturer's list price." Subsection (a)(9) amendment clarifies "manufacturer" to include a person who "produces" other tobacco products at the direction of a manufacturer, and defines the term "produces." Subsection (a)(11) amendment clarifies the term "manufacturer's list price" specifying that the price upon which the tax is based is the price reported monthly by manufacturers to the comptroller as required by Tax Code, §155.103(a)(4), which is the highest price at which a product is offered to distributors in Texas. Amended subsection (a)(11) clarifies and underscores manufacturers' statutory duty to file reports each month that include manufacturer's list price information. Subsection (b)(1)(B)(2) is amended to clarify that free cigars are taxed at the prevailing factory list price and free tobacco products are taxed at the prevailing manufacturer's list price. Subsection (b)(1)(B)(4) is amended to make a technical correction. Subsection (e)(6) is amended to delete wording that was included for clarification prior to September 1, 1999, but since that date has passed, the wording is no longer needed.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, the proposed amendment would have no significant fiscal impact on units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by eliminating confusion that has resulted in refund claims, threatened litigation and settlements over taxes due from distributors of tobacco products other than cigars. The resulting clarification would help ensure that the state collects the full amount of the tax imposed by the Legislature from all parties. Since the Legislature dedicated this tax in part to property tax relief, the public will enjoy the benefit of this improvement in the form of greater property tax relief.

Mr. Heleman also has determined that the proposed amendment would have a positive fiscal impact on state government revenues, with gains to both the General Revenue Fund 0001 and the Property Tax Relief Fund 0304. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Figure: 34 TAC Chapter 3 - Preamble

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, 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, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §155.021(b) and §155.0211(b).

§3.121. *Definitions, Imposition of Tax, Permits, and Reports.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

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

(9) Manufacturer--A person who manufactures or produces tobacco products and sells tobacco products to a distributor. The term "produces" includes marketing, labeling or otherwise preparing for sale in Texas other tobacco products at the direction of a manufacturer.

(10) (No change.)

(11) Manufacturer's list price--The price required to be reported monthly to the comptroller under Tax Code, §155.103(a)(4), which shall be the highest gross price for purchase at which units of a product are offered to distributors in Texas, inclusive of all delivery, destination or other charges of any kind that are assessed based on the number of units sold. A selling price less than the manufacturer's list price is assumed to include a trade discount, special discount or deal [published manufacturer gross cost to the distributor. The term is synonymous with factory list price].

(12) - (18) (No change.)

(b) Imposition of tax. A tax is imposed and becomes due and payable when a permit holder receives cigars or tobacco products for the purpose of making a first sale in this state.

(1) (No change.)

(2) Free cigars [goods] shall be taxed at the prevailing factory list price and free tobacco products shall be taxed at the prevailing manufacturer's list price.

(3) (No change.)

(4) A tax is imposed on manufacturers, who manufacture tobacco products in this state, at the time the tobacco products are first transferred in connection with a purchase, sale, or any exchange for value in intrastate commerce.

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

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

(e) Permit Fees. An application for a bonded agent, distributor, importer, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the required fee.

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

(6) The permit fee for a retailer permit [issued or renewed after August 31, 1999,] is \$180. Retailers who fail to obtain or renew a retailer permit in a timely manner are liable for the fee in effect for the applicable permit period, in addition to the fee described in paragraph (7) of this subsection.

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

(f) - (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 August 18, 2008.  
TRD-200804432

Ashley Harden  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Earliest possible date of adoption: September 28, 2008  
For further information, please call: (512) 475-0387

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**PART 9. TEXAS BOND REVIEW BOARD**

**CHAPTER 181. BOND REVIEW BOARD  
SUBCHAPTER A. BOND REVIEW RULES**

**34 TAC §181.2**

The Texas Bond Review Board (BRB) proposes amendments to §181.2, concerning Notice of Intention to Issue. Texas Government Code, Chapter 1231 was amended by the Texas Legislature, 80th Regular Session, Senate Bill 1332 effective September 1, 2007. The proposed amendments to the rule are to clarify processes related to the issuance of state securities.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments to this section.

Mr. Kline has also determined that for each year of the first five years the amendments are in effect the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small businesses. There is no additional anticipated economic cost to persons to comply with the amendments to this section.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to [kline@brb.state.tx.us](mailto:kline@brb.state.tx.us) or faxed to (512) 475-4802.

The amendments are proposed under Texas Government Code, §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The proposed amendments implement the Texas Government Code, Chapter 1231.

*§181.2. Notice of Intention to Issue.*

(a) Unless exempt pursuant to §181.9 of this title (relating to State Exemptions), an issuer intending to issue state securities shall submit a written or electronic notice of intention to issue to the bond finance office no later than the last Wednesday of the month prior to the month requested for Board consideration. Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible. A notice of intention under this subsection is not required prior to each new issuance of commercial paper if the issuer's commercial paper program has been approved by the Board or if it is exempt from approval pursuant to the provisions of §181.9 of this title. Except as required for Board approval pursuant to §181.3(f) of this title (relating to Application for Board Approval of State Securities Issuance), a notice of intention under this subsection is not required prior to each new issuance of commercial paper notes if the notes are issued in conformity with the terms of the commercial paper program that has been approved by the Board or is exempt from approval pursuant to the provisions of §181.9 of this title.



(b) A notice of intention to issue under subsection (a) of this section shall include:

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

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

(e) An issuer intending to issue state securities that are exempt from approval pursuant to §181.9 of this title shall submit during regular business hours a written or electronic notice of intent to the bond finance office at least seven business days prior to the date the securities are to be issued. Prospective issuers are encouraged to file the notice of intent [~~intention~~] as early in the issuance planning stage as possible. A notice of intent under this subsection is not required prior to each new issuance of commercial paper notes if the notes are issued in conformity with the terms of the commercial paper program for which a notice of intent has been filed with the bond finance office or that has been approved by the Board pursuant to §181.9(d) of this title.

(1) (No change.)

(2) Exempt issuers are required to submit a notice of intent which must contain:

(A) a completed exempt issuer state debt notice of intent in the form required by the bond finance office. A notice of intent is not required under this subsection for an issuance of commercial paper notes if the notes are issued in conformity with the terms of the commercial paper program for which a notice of intent has been filed with the bond finance office or that has been approved by the Board;

(B) - (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 August 18, 2008.

TRD-200804434

Robert Kline

Executive Director

Texas Bond Review Board

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 475-4800



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 151. GENERAL PROVISIONS

##### 37 TAC §151.51

The Texas Board of Criminal Justice files this notice of intent to review and proposes amendments to §151.51 concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years. The proposed amendments are necessary to add clarity and conform the rule to current practice.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first

five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to accurately reflect the eligibility guidelines for custodial officer certification and hazardous duty pay.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, Chapter 659, Subchapter L and §813.506.

Cross Reference to Statutes: Texas Government Code, §§492.013, 508.001, 615.006, 811.001, 815.505 and the General Appropriations Act.

*§151.51. Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines.*

(a) Purpose. The purpose of this rule is to establish eligibility criteria for authorizing custodial officer certification and hazardous duty pay to employees of the Texas Department of Criminal Justice (TDCJ or Agency), under the authority of the Texas Government Code, §508.001, §615.006, Chapter 659, Subchapter L, §§811.001, 813.506, and 815.505; and the *General Appropriations Act*. [~~In accordance with these provisions and in keeping with the responsibilities of the Texas Board of Criminal Justice (or Board), this rule relating to custodial officer certification and hazardous duty pay applies effective August 13, 2004.~~]

(b) Definitions. The following words and terms, when used in this rule, shall have the following meanings unless the context clearly indicates otherwise:

(1) "Custodial Officer Certification" is service [~~Service~~] certification to the Employees Retirement System of Texas (ERS) for those employees whom the Agency has determined are eligible for custodial officer service credit, which provides an additional retirement incentive when such employees have 20 or more years of such service credit.

(2) "Custodial Officer Service Credit" is credit [~~Credit~~] in the ERS for service performed by an employee who is in a position that has been classified as a Hazardous Duty Code 1, 2, 3, 4, 5, 6, 7 or 9 position in accordance with the provisions of this rule [~~Board Rule~~].

(3) "Direct Offender Contact" is interacting [~~Contact~~] with, and in the close proximity to, offenders without the protection of bars, doors, security screens[~~;~~] or similar devices while performing job duties. Such contact normally involves supervision or the potential for supervision of offenders in offender housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields[~~;~~] or in any other areas on or away from Agency property.

(4) "Offender," for [~~For~~] the purpose of custodial officer certification and hazardous duty pay, is an individual [~~inmate~~] confined in a TDCJ institution [~~Correctional Institutions Division facilities~~].

(5) "Releasee" is an individual who has been ~~[-A person]~~ released on parole or to mandatory supervision.

(6) "Routine Direct Offender Contact" is direct ~~[-Direct]~~ offender contact that is regularly planned or scheduled while conducting Agency business. Routine direct offender contact does not include travel time, unless the employee is responsible for the transportation and custody of offenders, and it does not include casual contact.

(c) Procedures.

(1) Custodial Officer Certification. Employees in the following positions are eligible for custodial officer certification:

(A) Hazardous Duty Code 1 Positions. These positions are classified as Correctional Officer I through Warden II.<sup>[;]</sup>

(B) Hazardous Duty Code 2 Positions. These positions include [are] all positions assigned to a unit, other than Hazardous Duty Code 1 positions, with [that have] job duties that require [requiring] routine direct offender contact. Examples of such positions include, but are not limited to~~[- the following]~~: Agriculture Specialists ~~[Specialist]~~, Maintenance Supervisors, Food Service Managers, Laundry Managers, and Commissary Managers. ~~[and Classification Case Managers;]~~

(C) Hazardous Duty Code 3 Positions. These positions are assigned to administrative employees whose [offices and have] job duties require [requiring] routine direct offender contact at least 50 percent of the time. Examples of such positions include, but are not limited to~~[- the following]~~: Investigators, Compliance Monitors, Accountants routinely required to audit unit operations, Sociologists, Interviewers~~[-]~~ and Classification Officers.

*(i)* A request to include a position ~~[Requests for positions to be included]~~ in this category shall [must] be submitted to ~~[approved by]~~ the Deputy Executive Director for approval.

*(ii)* Employees in such positions and supervisors of such employees shall complete and submit a Hazardous Duty Log in accordance with TDCJ procedures in order to justify custodial officer certification.<sup>[;]</sup>

(D) Hazardous Duty Code 4 Positions. These positions include [are] administrative positions that routinely respond to emergency situations involving offenders. Examples include, but are not limited to: the Executive Director, Deputy Directors ~~[Director]~~, Correctional Institutions Division (CID) Director, other Division Directors~~[- some Managers (salary group B14 and above);]~~ and not more than 25 administrative duty officers ~~[Administrative Duty Officers].~~ A request to include a position shall [Requests for positions to be included in this category must] be submitted to ~~[approved by]~~ the Deputy Executive Director for approval.<sup>[;]</sup>

~~{(E) Hazardous Duty Code 5 Positions. These positions are filled by employees whose custodial officer certification is "grandfathered" based on the following criteria in accordance with SB 993, 69th Legislature:-}~~

~~{(i) The employees were in positions authorized custodial officer certification and hazardous duty pay on August 31, 1985;-}~~

~~{(ii) The employees have not changed positions since August 31, 1985; and}~~

~~{(iii) The positions do not meet other current hazardous duty pay criteria;-}~~

(E) ~~{(F)}~~ Hazardous Duty Code 6 Positions ~~[Position]~~. Employees in such positions and supervisors of such employees shall complete and submit a Hazardous Duty Log in accordance with TDCJ

procedures in order to justify custodial officer certification. These positions are filled by employees whose custodial officer certification is "grandfathered" based on the following criteria in accordance with Senate Bill (SB) [SB] 1231, 74th Legislature:

*(i)* On August 31, 1995, the employees were assigned to a Hazardous Duty Code 3 position; and

*(ii)* The employees continue to have some routine direct offender contact although it is less than 50 percent routine direct offender contact.

(F) ~~{(G)}~~ Hazardous Duty Code 7 Positions. These positions include: ~~[are]~~

*(i)* Parole Officers; and~~[- Parole Case Managers; and other employees of]~~

*(ii)* Other positions within the Parole Division or assigned to the Board of Pardons and Paroles which have a [whose] majority of assigned duties that include [the] assessment of risks and needs, investigation, case management[-] and supervision of releasees to ensure that releasees are complying with the conditions of parole or mandatory supervision.~~[-]~~ It also includes those ~~[ø]~~ who directly supervise or are in a direct line of supervision over these employees.

(G) ~~{(H)}~~ Hazardous Duty Code 9 Positions. Employees in such positions and the supervisors of such employees shall complete and submit an Emergency Response Log in accordance with TDCJ procedures in order to justify custodial officer certification. These positions are filled by employees whose custodial officer certification is "grandfathered" based on the following criteria:

*(i)* On August 31, 1995, the employees were assigned to a position authorized for custodial officer certification and hazardous duty pay; and

*(ii)* The employees have been designated as members of an Emergency Response Team that may respond to emergency situations involving offenders.

(2) Hazardous Duty Pay Authorized Positions. In addition to the employees described in ~~[paragraph (1) of this]~~ subsection (c)(1) of this rule, employees in the following positions may receive hazardous duty pay:

(A) Employees [ employees] in positions authorized for custodial officer certification;

(B) Employees [ employees] in Hazardous Duty Code 8 positions. These positions are assigned to ~~[include employees and officials of]~~ the Parole Division or the Board of Pardons and Paroles and [who] do not meet the criteria for Hazardous Duty Code 7. Employees in these positions [but] have routine direct contact with offenders of a ~~[any]~~ penal or correctional institution or with administratively released offenders subject to the jurisdiction and/or the supervision of the Parole Division [releasees]. Examples of such positions include, but are not limited to, ~~[the following;-]~~ Clerks, Administrative Assistants and Laboratory Technicians assigned to Parole Field Offices.

(3) Each month, the Agency shall certify to the ERS the names of the employees and any other information determined and prescribed by the ERS as necessary for the crediting of custodial officer service and financing of benefits under §813.506, ~~[of the]~~ Texas Government Code.

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

Filed with the Office of the Secretary of State on August 14, 2008.

TRD-200804391  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Earliest possible date of adoption: September 28, 2008  
For further information, please call: (512) 463-0422



### 37 TAC §151.53

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

The Texas Board of Criminal Justice files this notice of intent to repeal §151.53, Multiple Employments with the State.

The purpose of the repeal is to relieve the Texas Board of Criminal Justice from approving multiple employments with the State as approval by the Board is not required by state law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that the proposed repeal will have no foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that there will be no economic impact on persons as a result of the repeal. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of the repeal, will be to expedite the approval of multiple employments with the State.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P. O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this repeal.

The repeal is proposed under Texas Government Code, Chapter 667.

Cross Reference to Statutes: Texas Government Code, §492.013.

*§151.53. Multiple Employments with the State.*

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

Filed with the Office of the Secretary of State on August 14, 2008.

TRD-200804392  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Earliest possible date of adoption: September 28, 2008  
For further information, please call: (512) 463-0422



## CHAPTER 155. REPORTS AND INFORMATION GATHERING

### SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

### 37 TAC §155.21

The Texas Board of Criminal Justice files this notice of intent to review and proposes amendments to §155.21, Naming of TDCJ Owned Facilities. This review is being conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years. The proposed revisions are necessary to add clarity.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro-businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide the public notice of and an opportunity to participate in the process for naming a TDCJ facility.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code, §492.013.

Cross Reference to Statutes: Texas Government Code, §492.013.

*§155.21. Naming of a Texas Department of Criminal Justice [TDCJ] Owned Facility [Facilities].*

(a) Purpose ~~[and Definition]~~. The purpose of this section is to establish procedures for the naming of a facility ~~[facilities]~~ owned by the Texas Department of Criminal Justice (TDCJ or Agency) ~~[(TDCJ)]~~. These naming procedures do not apply to a facility that is occupied by but not owned by the TDCJ. ~~[In this section, "facilities" shall mean units, buildings and portions of units or buildings such as individual rooms.]~~

(b) Definition. "Facility" is a unit, building, individual room or portion of a unit or building owned by the TDCJ.

(c) ~~[(b)]~~ Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ or Board) ~~[Board]~~ to name a facility ~~[facilities owned by the TDCJ]~~ based upon its geographical location, its function~~[- and/]~~ or to recognize an individual ~~[in recognition of individuals]~~ who has ~~[have]~~ contributed to the process of criminal justice in the State of Texas. Suggestions for the naming of a facility may be submitted by the public. However, the ~~[The]~~ Board specifically reserves the right to accept, refuse or choose a name other than those names ~~[any proposals]~~ submitted by the public for consideration. ~~[Such naming procedures do not apply to facilities merely occupied but not actually owned by the TDCJ.]~~

(d) ~~[(e)]~~ Procedures.

(1) ~~[(1)]~~ Suggestions ~~[Proposals]~~ for the naming of a facility ~~[facilities]~~ owned by the TDCJ shall be submitted to the Board office ~~[Office]~~ at P.O. Box 13084, Austin, Texas 78711. ~~[To be considered, each submitted suggestion shall [and must] include the following [information in order to be considered]:~~

(A) ~~[(A)]~~ Location ~~[Location]~~ of the facility to be named;

(B) [(2)] Proposed [proposed] name for the facility;

(C) [(3)] Biographical [biographical] sketch of the person if the proposed name is in recognition of [after] a specific individual;

(D) [(4)] Synopsis [synopsis] of the reasons, achievements, incidents and other justification that form [forming] the basis for the recommendation; and

(E) [(5)] If [if] the suggested [proposed] name is in recognition of [after] a specific individual, written approval from the individual or, if the individual is deceased, the individual's next-of-kin.

(2) Suggestions shall be reviewed by the Board Chairman and then maintained at the Board office for future consideration.

(3) Upon approval of the Board Chairman, the recommendation to name a facility shall be placed on a Board meeting agenda. The Board's discussion and consideration concerning the facility's name shall occur in an open meeting. A facility's name shall be approved by a majority vote of the Board.

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

Filed with the Office of the Secretary of State on August 14, 2008.

TRD-200804390

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 463-0422



## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.9

The Texas Board of Criminal Justice files this notice of intent to review and proposes amendments to §159.9 concerning Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years. The proposed amendments are necessary to conform to state law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, is to enhance public safety by equipping supervision officers with the necessary tools to effectively perform supervision responsibilities in the community.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Occupations Code, §1701.257.

Cross Reference to Statutes: Texas Government Code, §492.013.

§159.9. *Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding.*

(a) The Texas Department of Criminal Justice (TDCJ) adopts [by reference] a memorandum of understanding (MOU) with the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The MOU [; §211.33 of this title (relating to Memorandum of Understanding Regarding Firearms Proficiency Training For Supervision Officers); which] establishes the responsibilities between the two (2) agencies in developing a basic training program in the use of firearms by community supervision officers and parole officers. Section 163.34 of this title (relating to the Carrying of Weapons) governs the use of firearms for community supervision officers [Community Supervision Officers].

(b) The MOU is required by Texas Occupations Code, §1701.257 [House Bill 2909 (Chapter 1261, Session Laws, 75th Legislature)].

Figure: 37 TAC §159.9(b)

(c) A copy [Copies] of the MOU is [are] filed with [in] the TDCJ Parole Division, 8610 Shoal Creek [Office of the Texas Commission on Law Enforcement Officer Standards and Education, 6330 U. S. Highway 290 East, Suite 200], Austin, Texas 78758 [78723].

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 August 14, 2008.

TRD-200804389

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: September 28, 2008

For further information, please call: (512) 936-0422



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

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

#### CHAPTER 362. DEFINITIONS

##### 40 TAC §362.1

The Texas Board of Occupational Therapy Examiners, (TBOTE) proposes amendments to §362.1 concerning Definitions.

The section is being amended to delete unnecessary definitions and to match up the definition for occupational therapist and occupational therapy assistant in the rules with the definitions in the OT Practice Act.

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 rule.

Mr. Maline also has determined that the public benefit anticipated as a result of enforcing the amended rules will be the consistency of using OT and OTA as terms for occupational therapist and occupational therapy assistant. Those who want to maintain additional registration and certification may continue to do so. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

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

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations 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 this Act.

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

§362.1. *Definitions.*

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(2) AOTA--American Occupational Therapy Association.

(3) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(4) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(5) Certified Occupational Therapy Assistant (COTA)--An alternate term for a Licensed Occupational Therapy Assistant. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR or LOT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(6) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(7) Client--The entity that receives occupational therapy. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(8) Complete Application--Notarized application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly and all other required documents.

(9) Complete Renewal--Contains renewal fee, renewal form with signed continuing education affidavit, home/work ad-

dress(es) and phone number(s), and jurisprudence examination with at least 70% of questions answered correctly.

(10) Continuing Education Committee--Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

(11) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(12) Direct Contact--Refers to contact with the client and includes face-to-face in person or via visual telecommunications.

(13) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification Examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

~~[(19) Health Care Condition--See Medical Condition.]~~

~~[(20)]~~ (19) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

~~[(21)]~~ (20) Investigation Committee--Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

~~[(22)]~~ (21) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

~~[(23)]~~ (22) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination with multiple choice or true-false questions. The passing score is 70%.

~~[(24)]~~ (23) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

~~[(25) Licensed Occupational Therapist (LOT)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapist in Texas.]~~

~~(26) Licensed Occupational Therapy Assistant (LOTA)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and who is required to practice under the general supervision of an OTR or LOT.]~~

~~(24) [(27)] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status Synonymous with the term health care condition.~~

~~(25) [(28)] NBCOT--National Board for Certification in Occupational Therapy.~~

~~(26) [(29)] Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and close personal supervision.~~

~~(27) [(30)] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.~~

~~(28) [(31)] Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.~~

~~(29) [(32)] Occupational Therapist (OT)--A person who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist who is designated as an Occupational Therapy, Registered (OTR) and a Licensed Occupational Therapy (LOT). [Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.]~~

~~(30) [(33)] Occupational Therapist, Registered (OTR)--An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.~~

~~(31) [(34)] Occupational Therapy Practice--includes:~~

~~(A) Methods or strategies selected to direct the process of interventions such as:~~

~~(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.~~

~~(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.~~

~~(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.~~

~~(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.~~

~~(v) Prevention of barriers to performance, including disability prevention.~~

~~(B) Evaluation of factors affecting activities of daily living (ADL) instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:~~

~~(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).~~

~~(ii) Habits, routines, roles and behavior patterns.~~

~~(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.~~

~~(iv) Performance skills, including motor, process, and communication/interaction skills.~~

~~(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:~~

~~(i) Therapeutic use of occupations, exercises, and activities.~~

~~(ii) Training in self-care, self-management, home management and community/work reintegration.~~

~~(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.~~

~~(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.~~

~~(v) Education and training of individuals, including family members, caregivers, and others.~~

~~(vi) Care coordination, case management and transition services.~~

~~(vii) Consultative services to groups, programs, organizations, or communities.~~

~~(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.~~

~~(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.~~

~~(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.~~

~~(xi) Driver rehabilitation and community mobility.~~

~~(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.~~

~~(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.~~

~~(32) [(35)] Occupational Therapy Assistant (OTA)--A person who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas. This definition includes an occupational therapist who is designated as a Certified Occupational Therapy Assistant (COTA) and a Licensed Occupational Therapy Assistant (LOTA) [Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available Examination,] and who is required to be under the continuing supervision of an OT [OTR or LOT].~~

(33) [(36)] Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(34) [(37)] Occupational Therapy Practitioners--[Registered] Occupational Therapists, and [Licensed Occupational Therapists, Certified] Occupational Therapy Assistants [and Licensed Occupational Therapy Assistant] licensed by this board.

(35) [(38)] Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(36) [(39)] Place(s) of Business--Any facility in which a licensee practices.

(37) [(40)] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

(38) [(41)] Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

[(42)] Regular License--A license issued by TBOTE to an applicant who has met the academic requirements and who has passed the Examination.}

(39) [(43)] Rules--Refers to the TBOTE Rules.

(40) [(44)] Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

[(45)] Supervision--See Chapter 373 of this title (relating to Supervision).}

[(46)] Temporary License--A license issued by TBOTE to an applicant who meets all the qualifications for a license except taking the first available Examination after completion of all education requirements.}

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 August 15, 2008.

TRD-200804404

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: September 28, 2008

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



# WITHDRAWN RULES

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

## TITLE 22. EXAMINING BOARDS

### PART 15. TEXAS STATE BOARD OF PHARMACY

#### CHAPTER 309. SUBSTITUTION OF DRUG PRODUCTS

##### 22 TAC §309.1

The Texas State Board of Pharmacy withdraws the proposed amendment to §309.1 which appeared in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4800).

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804485

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: August 19, 2008

For further information, please call: (512) 305-8028





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

##### 1 TAC §355.503

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3855) and will not be republished.

##### Background and Justification

This rule establishes the reimbursement methodology for the Community-Based Alternatives (CBA) waiver program and the Integrated Care Management-Home and Community Support Services (ICM-HCSS) and Assisted Living/Residential Care (AL/RC) programs. The CBA waiver program and the ICM-HCSS program include in their service arrays out-of-home respite care delivered in a nursing facility.

The Texas Medicaid nursing facility program currently uses the Texas Index for Level of Effort (TILE) case mix system to establish nursing facility reimbursement rates. Effective September 1, 2008, HHSC will replace the TILE case mix system with the Resource Utilization Groups (RUG) case mix system for setting nursing facility reimbursement. Reimbursement rates for CMA and ICM-HCSS out-of-home respite currently are based on nursing facility TILE rates. Because of the change to the nursing facility case mix system, the CMA and ICM-HCSS out-of-home respite reimbursement methodology must be revised to remove the reference to TILE.

HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace the reference in subsection (d)(2)(C) to the TILE case mix class with a general reference to the Nursing Facility (NF) case mix class. This will allow HHSC to continue to reimburse out-of-home respite care provided in a nursing facility.

##### Comments

The 30-day comment period ended June 16, 2008. During this period, HHSC received no comments regarding the proposed amendment to this rule.

The amendment is adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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 August 14, 2008.

TRD-200804372

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 3, 2008

Proposal publication date: May 16, 2008

For further information, please call: (512) 424-6900

## TITLE 7. BANKING AND SECURITIES

### PART 7. STATE SECURITIES BOARD

#### CHAPTER 117. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF REAL ESTATE PROGRAMS

##### 7 TAC §§117.1 - 117.9

The Texas State Securities Board adopts the repeal of Chapter 117, consisting of §§117.1 - 117.9, concerning administrative guidelines for registration of real estate programs, without changes to the proposal as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1919).

The repeal was adopted so that a new Chapter 117 can be simultaneously adopted.

The repeal eliminates an outdated chapter.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the

provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted repeal affects Texas Civil Statutes, Article 581-7.

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 August 18, 2008.

TRD-200804435

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: September 7, 2008

Proposal publication date: March 7, 2008

For further information, please call: (512) 305-8303



### 7 TAC §§117.1 - 117.9

The Texas State Securities Board adopts new Chapter 117, consisting of §§117.1 - 117.9, concerning administrative guidelines for registration of real estate programs. The rules were adopted without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1919) and will not be republished. In related rulemaking, the Board is adopting by reference new §133.31, a form concerning the real estate guidelines cross reference sheet, to replace outdated §133.31, which is being concurrently repealed.

The new chapter replaces the existing Chapter 117, which is being concurrently repealed, with updated administrative guidelines recently adopted by the North American Securities Administrators Association, Inc. (NASAA). The NASAA policies are applied by a number of other states registering such programs.

Uniform rules, developed in coordination with securities administrators in other jurisdictions, will be used in registering real estate programs.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted rules affect Texas Civil Statutes, Article 581-7.

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 August 18, 2008.

TRD-200804437

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: September 7, 2008

Proposal publication date: March 7, 2008

For further information, please call: (512) 305-8303



## CHAPTER 133. FORMS

### 7 TAC §133.31

The Texas State Securities Board adopts the repeal of §133.31, a form concerning the real estate guidelines cross reference sheet, without changes to the proposal as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1939).

The repeal of this form allows for the simultaneous adoption of a new form.

The repeal eliminates an outdated form.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted repeal affects Texas Civil Statutes, Article 581-7.

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

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TRD-200804439

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: September 7, 2008

Proposal publication date: March 7, 2008

For further information, please call: (512) 305-8303



### 7 TAC §133.31

The Texas State Securities Board adopts by reference new §133.31, a form concerning the real estate guidelines cross reference sheet, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1939).

The new form incorporates changes recently adopted by the North American Securities Administrators Association, Inc. (NASAA).

The adopted form, developed in coordination with securities regulators in other jurisdictions, will be used in reviewing and processing applications for the registration of real estate programs.

No comments were received regarding adoption of the new rule.

The rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted rule affects Texas Civil Statutes, Article 581-7.

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

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Denise Voigt Crawford  
Securities Commissioner  
State Securities Board

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For further information, please call: (512) 305-8303



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

##### SUBCHAPTER J. COSTS, RATES AND TARIFFS

##### DIVISION 1. RETAIL RATES

###### 16 TAC §25.237

The Public Utility Commission of Texas (commission) adopts an amendment to §25.237 relating to Fuel Factors with changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1943). The amendment maintains the traditional fuel factor filing on a fixed schedule and a prescribed filing package and adds the option, and procedure, for a utility to determine its fuel factor using a commission-approved, utility-specific fuel factor formula. In addition, a utility using the traditional method will now be able to revise its fuel factor on a fixed, four-month schedule rather than a fixed, six-month schedule. A utility using the new formula will be able to revise its fuel factor as often as every four months, except for the month of December, and will not be subject to a set schedule. This amendment is adopted under Project Number 34914.

The commission received written comments on the amendment from Xcel Energy, Inc., on behalf of Southwestern Public Service Company (SPS); Entergy Gulf States, Inc. whose name was subsequently changed to Entergy Texas, Inc. (ETI); El Paso Electric Company (EPE); and Texas Industrial Energy Consumers (TIEC).

The commission received written reply comments on the amendment from ETI, TIEC, and SPS.

#### *General Comments - Implementation of Revised Fuel Factor Rule*

SPS sought clarification regarding what actions would be necessary to modify its current formula-based fuel factor to utilize the more frequent fuel factor modifications allowed by the rule. SPS asked whether the rule supersedes the current agreement for modification of SPS's commission-approved formulae only at set times twice a year or whether SPS is required to file a petition requesting a commission-approved fuel factor formula in order to take advantage of the more frequent fuel factor modifications. In reply comments, ETI stated it also currently utilizes a formulaic approach developed by agreement that results in a fuel factor adjustment twice a year. ETI stated it would benefit from guidance as to whether the procedural aspects of the rule would apply to ETI without modifying the substance of ETI's current formula.

In reply comments, TIEC stated that in order to modify its existing fuel factor formula, which was approved by commission order, SPS or ETI would need to seek commission approval through a petition under the rule. TIEC stated that enacting the rule should not upset a prior settlement, which was based on give and take between the parties.

#### *Commission Response*

ETI and SPS each currently utilize a formula to calculate its fuel factor that is the result of a settlement agreement and that was approved by commission order. Replacement of such a formula with the formula in the rule will require commission approval in a separate proceeding, which may be initiated by the affected utility.

#### *Subsection (a)(1)*

TIEC stated that if a formula-based approach was used in lieu of the traditional method, the rule should require that all fuel factor formulas be based on costs and sales for a historical period. In reply comments, SPS stated that it agrees with TIEC that historical costs are more certain than projected costs, but the real issue is whether the fuel expenses that will be incurred during the next three to six months will be accurately reflected in the approved fuel factors. In reply comments, ETI stated that the use of historical or projected costs was best addressed as part of the setting of the utility-specific fuel factor formula.

#### *Commission Response*

The traditional fuel factor is determined using projected costs and sales. The formula for a formula-based fuel factor is determined in a contested case. The parties in the contested case can address, at that time, if historical or projected costs and sales are appropriate for the formula being established.

#### *Subsection (a)(2)(A)*

EPE stated the commission should allow utilities that are not using a formula-based approach to file on a more frequent basis. EPE proposed to delete limitations on the filing of changes in fuel factors and allow utilities to file for a fuel factor change whenever they deemed appropriate. As an alternative, EPE proposed a schedule providing for revisions every four months, which is discussed in subsection (d) below. In reply comments, SPS supported EPE's suggestion for more frequent filings. SPS stated that the schedule not be set arbitrarily but rather be set taking into account the seasonal trends of each individual utility. In reply comments, TIEC stated that the rule should not allow utilities to revise formula-based fuel factors more often than traditional

fuel factors and it did not oppose the revision of both the traditional fuel factor and the formula-based fuel factor up to three times per year.

#### *Commission Response*

The commission concludes that it would be inefficient and would send confusing price signals to customers if fuel factors were changed more frequently than three times per year. The commission concludes that the opportunity to make fuel factor filings more frequently, on a schedule of three times per year, is in the best interest of customers and utilities. More frequent opportunity to make fuel factor adjustments to respond to significant fluctuations in fuel prices will provide more accurate price signals to customers and minimize over or undercollection of fuel expenses.

#### *Subsection (a)(2)(B)*

ETI stated its belief that more frequent changes in the fuel factor would better track changes in fuel and purchased power prices and ultimately would facilitate a more timely recovery of fuel expenses, reduce litigation, and provide more accurate price signals to customers. SPS expressed concern that utilities seeking a fuel factor modification pursuant to a commission-approved formula would need the ability to request fuel factor modifications more often than once every four months. SPS made a suggestion that would allow a fuel factor change up to four times a year instead of the proposed three times per year. SPS provided specific language as follows:

"(B) Pursuant to subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than three months after its most recent petition."

In reply comments, TIEC stated that the rule should not allow utilities to revise formula-based fuel factors more often than traditional fuel factors and it did not oppose the revision of both the traditional fuel factor and the formula-based fuel factor up to three times per year.

#### *Commission Response*

The commission concludes that allowing formula-based fuel factors to be redetermined as often as every four months will be adequate to help the utility to recover its current fuel costs and at the same time send accurate fuel price trend information to the utility's customers.

#### *Subsection (a)(3)(B)*

EPE expressed confusion regarding surcharges and refunds due to the deletion of one sentence and parts of two other sentences. The deleted sentence identified the schedule that the utilities use to request a surcharge or refund. EPE stated support for the deletion if it meant that a utility could request a surcharge or refund at any time. However, EPE referred to §25.236(e)(6), which requires surcharges and refunds to be processed in accordance with the filing schedules in §25.237(d) and the deadlines in §25.237(e). EPE wanted to clarify the intent of the conflicting language. In reply comments, SPS agreed that the ambiguities pointed out in EPE's comments should be resolved.

#### *Commission Response*

The commission will allow a utility to petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection.

A utility must petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. The commission has changed the rule to make clear that the rule overrides §25.236(e)(6).

#### *Subsection (c)(1)*

EPE stated that paragraph (1) applies only to non-formula-based factors and paragraph (2) applies only to formula-based factors. EPE stated that the language originally contained in paragraph (2) should still apply to paragraph (1). EPE stated that the removal on the limitation of scope might mean that intervenors and Staff are free to raise any other issue that they want to raise. EPE provided specific language to address its concern:

"(c) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows:

(1) *The scope of a fuel factor revision proceeding under Subsection (a)(1)(A) is limited to the issue of whether the petitioning electric utility has appropriately calculated its estimated eligible fuel expenses and load. In a proceeding to revise fuel factors pursuant to subsection (a)(1)(A), an electric utility has the burden of proving that:*"

#### *Commission Response*

The commission rejects the language EPE proposes to include. The amended rule follows the language that was in the original rule and no changes are intended. Nothing in the amendment is intended to change the scope of a fuel factor proceeding.

#### *Subsection (c)(2)*

TIEC stated that utilities using a fuel factor formula should have the burden to prove in each revision proceeding that its monthly system sales, off-system sales, and sales by customer class and voltage are reasonable. This would protect customers to the same extent as the current rule and is necessary to avoid over-incentivizing the formula-based method.

In reply comments, ETI stated that it could be presumed that the fuel factor formula developed under the rule would contain system and off-system sales information so there would be no need to independently assess such data to set a new fuel factor rate in each instance. In reply comments, SPS stated that it believed that with the expedited nature of a formula-based fuel factor revision proceeding, system sales, off-system sales, and sales by customer class and voltage are issues that are properly addressed in the proceeding requesting a commission approved formula or a fuel reconciliation proceeding.

#### *Commission Response*

System sales, off-system sales, and sales by customer class and voltage are fairly stable components in determining a revised fuel factor. As long as sales remain stable, redetermining the fuel factor is possible by revising the more volatile fuel component. Significant changes in sales can be evaluated, as needed, in the contested fuel factor proceeding.

#### *Subsection (d)*

TIEC stated that formula-based fuel factors should be revised only as frequently as traditional fuel factors, which is twice per year under both the current and proposed rule. If the Commission allows more frequent revisions, TIEC stated that the rule should clearly state that formula-based fuel factors should be adjusted no more often than quarterly. In reply comments, TIEC commented that it did not object to EPE's request that utilities

be allowed to adjust traditional fuel factors up to three times per year. TIEC also stated that the language in the proposed rule that addresses when a utility can revise its formula-based factor is confusing and creates uncertainty. TIEC supported the filing schedule proposed by EPE for both traditional factors and formula-based factors. EPE proposed the following schedule in §25.237(d)(1) for utilities to make fuel factor revision filings as part of its suggestion under §25.237(a)(2) to allow revisions more often than once every six months:

Figure: 16 TAC Chapter 25 - Preamble

ETI stated that natural gas and power markets can exhibit volatility that cause over/under-recoveries to grow over a short period of time and more frequent fuel factor revisions will reduce the need for interim refunds and surcharges.

#### *Commission Response*

The commission concludes that the request of the parties to schedule traditional fuel factor revisions more often than at six-month intervals is reasonable. Traditional fuel factor revisions will be on a set-schedule with a four-month interval. Formula-based fuel factor revisions will not have a set schedule but may occur as often as once every four months, except for the month of December. December is eliminated because the expedited procedural schedule and the holiday schedule do not allow the parties sufficient time to review and process an application.

#### *Subsection (d)(2)*

EPE proposed language to be added in §25.237(d)(2) to clear up confusion they found in §25.237 (a)(3)(B) discussed above. Its proposal was as follows: "(2) Petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(B) of this section or petitions to make a refund or surcharge pursuant to subsection (a)(3)(B) of this section may be filed in any month except December."

EPE stated it would be preferable to allow utilities to make surcharges and refunds whenever needed rather than limiting them to two (or three) windows per year for making such filings.

TIEC disagreed with EPE's suggestion of allowing utilities to file petitions for refunds and surcharges at their discretion. TIEC proposed that utilities be required to follow the prescribed monthly filing schedule for both fuel factor revisions and surcharges and refunds, as provided for under the current rule.

#### *Commission Response*

The proposed language insert is unnecessary because of the change to the rule described in subsection (a)(3)(B) above. The rule will allow a utility to petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. A utility must petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. The commission rejects TIEC's proposal to limit refunds and surcharges to a prescribed schedule. Instead, the rule appropriately ties refunds and surcharges to a materiality requirement.

#### *Subsection (e)*

TIEC stated that the procedural schedule for formula-based revisions should be the same as the procedural schedule for traditional fuel factors. TIEC also stated that the rule should not allow interim approval of fuel factor formula revisions. TIEC also stated that the procedural schedule for utilities that use the

formula-based approach is unclear because the rule is silent on what happens if there is an objection within 10 days. TIEC stated that if an objection is made, the interim relief should not be granted and the timelines in the rule would apply.

ETI stated that one of the goals of the formula-based approach, in addition to administrative efficiency, was to capture more recent fuel prices. ETI also stated that the streamlined, procedurally-attractive nature of the new formula-based approach would be a benefit to customers because it would more closely track fuel costs and mitigate the need for interim surcharges and refunds. ETI also stated that interim approval pending completion of publication of notice is an efficient process that still allows the opportunity for a request for hearing should any party believe that the utility failed to properly follow the formula in place at that time. ETI also stated that in the event of an objection, interim rates may go into effect if consistent with the utility's formula, subject to refund after hearing.

#### *Commission Response*

Formula-based fuel factor revision applications have a limited amount of variable data and can be reviewed and verified within 10 days of filing. The rule allows interim approval of formula-based fuel factor revision if no objection is filed within 10 days after the petition is filed. Objections are seldom filed in formula-based petitions; however, if the presiding officer finds an objection appropriate, collection of the revised fuel factor rates will not begin until the final order is issued. Traditional fuel factor applications contain much more data and normally require 30 - 45 days to review. Due to the amount of data and review, traditional petitions are often contested and result in a negotiated settlement. It is reasonable to finalize the fuel factor rate to be placed into effect, without interim approval, so that mixed signals are not sent to customers.

EPE proposed that refunds and surcharges for a utility using a formula-based fuel factor be approved on an interim basis, like a fuel factor change filed pursuant to the formula. TIEC commented on EPE's proposal and reiterated that it does not support the expedited schedule set forth in the rule. TIEC stated that to the extent the commission adopts the schedule as proposed, proposals for refunds and surcharges for utilities using a fuel-factor formula should proceed under the schedule for processing traditional fuel factors. A surcharge or refund should not be implemented on an interim basis because such cases are often contested, and parties must be given ample time to review the petition.

#### *Commission Response*

The commission rejects EPE's request for interim approval of surcharges and refunds. Surcharges and refunds are normally contested issues and there is no reason to grant interim approval just to save one to two months of procedural time. Many surcharge and refund petitions are resolved by settlement and the negotiated amounts are usually different than the requested amounts. It will cause less confusion for customers if the amount to be surcharged or refunded is not changed during the approval process.

All comments, including those not specifically discussed herein, were fully considered by the commission.

The amendment to §25.237 is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably

required in the exercise of its powers and jurisdiction; and PURA §36.203, which authorizes the commission to adopt rules that provide for the timely adjustment of a utility's fuel factor.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §36.203.

§25.237. *Fuel Factors.*

(a) Use and calculation of fuel factors. An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

(1) An electric utility may determine its fuel factor in dollars per kilowatt-hour pursuant to either subparagraph (A) or (B) of this paragraph. Fuel factors must account for system losses and for the difference in line losses corresponding to the voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.

(A) Fuel factors may be determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect.

(B) Fuel factors may be determined using a commission-approved, utility-specific fuel factor formula. Fuel factor formulas may be approved or revised only in a general rate change proceeding or a proceeding to consider an application to establish a fuel factor formula with notice and an opportunity for a hearing.

(2) An electric utility may initiate a change to its fuel factor as follows:

(A) Pursuant to subsection (a)(1)(A) of this section, an electric utility may petition to adjust its fuel factor as often as once every four months according to the schedule set out in subsection (d) of this section.

(B) Pursuant to subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than four months after the filing of its most recent fuel factor adjustment petition.

(C) Notwithstanding subsection (a)(2)(A) of this section, an electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.

(D) An electric utility's fuel factor may be changed in any general rate proceeding.

(3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:

(A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any disallowed costs resulting from a reconciliation proceeding will be reflected in the calculation of the utility's recoverable fuel and over/(under) collections.

(B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor. Notwithstanding §25.236(e)(6) of this title, an elec-

tric utility may petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. Notwithstanding §25.236(e)(6) of this title, an electric utility shall petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(b) Petitions to revise fuel factors.

(1) An electric utility using the fuel factor methodology set forth under subsection (a)(1)(A) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(A) of this section during the first five business days of the months specified in subsection (d) of this section. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include the commission-prescribed fuel factor application, a tariff sheet reflecting the proposed fuel factors and supporting testimony that includes the following information:

(A) For each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available,

(i) the revenues collected pursuant to fuel factors by customer class;

(ii) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and

(iii) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.

(B) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided.

(2) An electric utility using the fuel factor formula methodology set forth under subsection (a)(1)(B) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(B) of this section at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include:

(A) a tariff sheet reflecting the proposed fuel factors;

(B) workpapers supporting the calculation of the revised fuel factors;

(C) calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided; and

(D) any computer generated documents must be provided in their native electronic format with all cells and internal formulas disclosed.

(c) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows:

(1) In a proceeding to revise fuel factors pursuant to subsection (a)(1)(A) of this section, an electric utility has the burden of proving that:

(A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;

(B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and

(C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the voltage at which the electric service is provided.

(2) The scope of a fuel factor revision proceeding under subsection (a)(1)(B) of this section is limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors. In a proceeding to revise fuel factors pursuant to subsection (a)(1)(B) of this section, an electric utility has the burden of proving that:

(A) the electric utility has calculated its proposed fuel factors in compliance with the commission-approved fuel factor formula; and

(B) the proposed fuel factors utilize a commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided.

(d) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors or to initiate or revise a fuel factor formula may be filed with any general rate proceeding.

(1) Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(A) of this section may only be filed in accordance with the following schedule:

(A) February, June and October: El Paso Electric Company;

(B) March, July and November: Entergy Texas, Inc.;

(C) April, August and December: Southwestern Public Service Company;

(D) May, September and January: Southwestern Electric Power Company; and

(E) March, July and November: any other electric utility not named in this subsection that uses one or more fuel factors.

(2) Petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(B) of this section may be filed in any month except December.

(e) Procedural schedules.

(1) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(A) of this section, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

(A) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and

(B) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested,

the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

(2) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(B) of this section, the presiding officer shall set a procedural schedule as follows:

(A) the presiding officer shall issue an order approving the proposed fuel factors on an interim basis no later than 12 days after the date the petition was filed, if no objection to interim approval is filed within 10 days after the date the petition was filed;

(B) if no hearing is requested within 30 days after the petition was filed, the presiding officer shall, after submission of proof of notice by the electric utility, issue an order approving the fuel factors without hearing or action by the commission; and

(C) if a hearing is requested within 30 days after the petition was filed, the hearing will be held no earlier than the first business day after the 45th day after the petition was filed and a final order will be issued within 90 days after the petition was filed, subject to submission of proof of notice by the electric utility.

(f) Emergency revisions to the fuel factor. If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

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 August 15, 2008.

TRD-200804402

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Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER C. OTHER PROVISIONS

## 19 TAC §74.36

The State Board of Education (SBOE) adopts new §74.36, concerning requirements for elective courses on the Bible's Hebrew Scriptures (Old Testament) and New Testament and their impact on the history and literature of Western civilization. The new section is adopted without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3110) and will not be republished. The adopted new rule adds requirements for the teaching of an elective course on the Hebrew Scriptures (Old Testament) and the New Testament and their impact, as required in Texas Education Code (TEC), §28.011.

The 80th Texas Legislature passed House Bill (HB) 1287, adding TEC, §28.011, allowing school districts to teach an elective course on the Hebrew Scriptures (Old Testament) and the New Testament and their impact on the history and literature of Western civilization. School districts currently have the discretion to teach any topic in Special Topics in Social Studies or Independent Study in English. The Texas Essential Knowledge and Skills (TEKS) for these courses focus on the skills students should develop, and the content decisions are left to local district discretion.

During the July 2007 meeting, the SBOE Committee of the Full Board discussed the requirements of HB 1287 as part of a discussion item on the process for TEKS review. At the meeting, the committee directed staff to send the TEKS for both Special Topics in Social Studies and Independent Study in English to the Attorney General. A proposed rule allowing the elective course on the Hebrew Scriptures (Old Testament) and the New Testament to be taught using the TEKS for Special Topics in Social Studies or Independent Study in English was presented to the SBOE at its March 2008 meeting.

Following SBOE approval of proposed new 19 TAC §74.36 for first reading and filing authorization at the March 2008 meeting, the proposal, which includes the proposed essential knowledge and skills of a course offered under the TEC, §28.011, was submitted to the Attorney General for review. In accordance with TEC, §28.011(e), the proposal was required to be submitted to the Attorney General for review to ensure that the course complies with the First Amendment to the United States Constitution before the SBOE adopted the proposal.

The SBOE postponed action on this item at the May 2008 meeting because no comments had been received from the Attorney General's office. Subsequent to receiving a response from the Attorney General's Office that the proposal had been reviewed and appears to be facially valid under the First Amendment of the United States Constitution, the SBOE approved the new section for second reading and final adoption at the July 2008 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2009-2010 school year. The earlier effective date will allow for professional development and dissemination of information to occur prior to implementation in the 2009-2010 school year. The effective date of the adopted new section is September 1, 2008.

The Texas Education Agency determined that the adopted new section will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following is a summary of comments received and corresponding SBOE responses regarding the proposed new section.

**Comment.** A professor of comparative literature at The University of Texas at San Antonio and an individual expressed concern that the guidelines for teaching of the Bible in public schools are too vague and allow for the possibility of indoctrination rather than instruction.

**Response.** The SBOE disagreed and took action to adopt the rule as filed as proposed. The SBOE determined that the rule was sufficient to meet the requirements of the law.

**Comment.** The National Council of Jewish Women and an individual expressed concern that the vague guidelines under consideration focus on skills, not content, and include no meaningful standards schools can use to teach how the Bible has been influential in history and literature. The individual urged the adoption of clear, specific, and unbiased curriculum standards that promote a respectful study of the Bible and protect the religious freedom of students.

**Response.** The SBOE disagreed and took action to adopt the rule as filed as proposed. The SBOE determined that the rule was sufficient to meet the requirements of the law.

**Comment.** An educator and an individual expressed the belief that the proposed rule violates separation of church and state and that the course cannot be taught without religious bias.

**Response.** The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

**Comment.** An individual expressed the belief that knowledge of Biblical stories would be advantageous to understanding allusions/archetypes of literature, but finds the course necessarily limited. The individual suggests a complementary course in Greek/Roman mythology.

**Response.** The SBOE disagreed and took action to adopt the rule as filed as proposed. The SBOE has adopted Texas Essential Knowledge and Skills for various high school courses that are sufficiently broad to enable schools to teach courses such as Greek/Roman mythology.

**Comment.** An individual asked which version of the Bible would be used for this course.

**Response.** State law indicates that a student may not be required to use a specific translation as the sole text of the Hebrew Scriptures or New Testament and may use as the basic textbook a different translation of the Hebrew Scriptures or New Testament from that chosen by the board of trustees of the student's school district or the student's teacher.

**Comment.** An individual stated that mythologies of the Norse, Greeks, Romans, and Babylonians as well as the holy works of Buddhism, Hinduism, and Islam had an enormous impact on Western literature and should be included in this course as well.

**Response.** The SBOE disagreed and took action to adopt the rule as filed as proposed. The SBOE has adopted Texas Essential Knowledge and Skills for various high school courses that are sufficiently broad to enable schools to teach courses in areas such as those recommended in the comment.

**Comment.** An individual expressed support for the course as long as it is not taught as religious Bible study and provided that districts do not make it a "de facto" requirement.



Response. The SBOE agreed and took action to adopt the rule as filed as proposed.

Comment. Six individuals supported the proposed rule.

Response. The SBOE agreed and took action to adopt the rule as filed as proposed.

Comment. A professor at Rice University expressed the belief that this course should only be taught by people who have extensive, certified training in biblical scholarship and in such a way that absolutely no effort will be made to convert students to a particular point of view regarding the truth or falsity of the Hebrew Bible.

Response. The SBOE agreed and took action to adopt the rule as filed as proposed. The law outlines requirements for training of teachers who would teach this course.

Comment. An individual expressed concern that the course will become a religious/faith-based course. The individual further commented that the main purpose of the course should be to teach understanding of biblical allusions that are commonly referred to in other written works.

Response. The SBOE disagreed with the comment that the course will become a religious/faith-based course and took action to adopt the rule as filed as proposed. Both law and rule require that a course offered under this section follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in their school district. A course under this rule shall not endorse, favor, or promote, or disfavor or show hostility toward, any particular religion or non-religious faith or religious perspective.

Comment. Two individuals supported the rule as long as the class is an elective and is not made mandatory.

Response. The SBOE agreed and took action to adopt the rule as filed as proposed. The course will be an elective course and will not be mandatory.

Comment. An individual asked what type of certification would be required for this course.

Response. State law requires that a teacher of a course offered under this section must hold a minimum of a High School Composite Certification in language arts, social studies, or history with, where practical, a minor in religion or biblical studies.

Comment. An individual expressed opposition to the rule. The individual further commented that these concepts are the responsibility of the home and religious institutions.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. The SBOE was required by law to identify Texas Essential Knowledge and Skills for an elective course on the Bible's Hebrew Scriptures (Old Testament) and New Testament and Their Impact on the History and Literature of Western Civilization.

Comment. Two individuals suggested that a course in all religions or in comparative religion would help further understanding of various cultures and religions by both teachers and students.

Response. The SBOE agreed and took action to adopt the rule as filed as proposed.

Comment. An individual expressed opposition to the teaching of religion in public high schools using taxpayer dollars.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. The SBOE was required by law to identify Texas Essential Knowledge and Skills for an elective course on the Bible's Hebrew Scriptures (Old Testament) and New Testament and Their Impact on the History and Literature of Western Civilization.

Comment. A professor at Southern Methodist University expressed the belief that the proposed standards are inadequate and do not address the First Amendment aspect of religion courses. The professor indicated that standards developed specifically for Bible courses are essential to give Texas teachers the guidance they need to offer academically and legally appropriate classes.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. Three members of the Texas House of Representatives commented that the main purpose of the legislation authorizing this rule was to provide for a well-defined curriculum. The state representatives indicated that the legislature expects the SBOE to adopt specific curriculum for elective courses and that extra attention to curriculum is required so districts will be less fearful of legal challenges. The state representatives further indicated that the existence of vendors selling Bible curricula in the marketplace does not justify the adoption of vague curriculum standards. In closing, the state representatives urged the SBOE to reject the proposed vague standards and begin a process to build a well-defined course.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. The Texas Conservative Coalition commented in support of the proposed rule.

Response. The SBOE agreed and took action to adopt the rule as filed as proposed.

Comment. The Anti-Defamation League commented that the best way to safeguard religious freedom is through separation of church and state. The Anti-Defamation League further expressed concerns that the proposed rule is constitutionally problematic. Rather than being specific and exacting, it is overly general, broad, and discretionary. The Anti-Defamation League urged modification and revision of the rule.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. A member of the Texas House of Representatives expressed the belief that the proposed rule does not meet the intent of the law.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. A representative from the Texas Citizens for Science expressed the belief that the rule did not include content and is not adequate for this course.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. A professor at The University of Texas at Austin expressed the belief that the skills in the rule are appropriate, however, content is missing from the rule.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. A representative from the Texas Freedom Network shared information on courses that school districts are already implementing on this topic under general Texas Essential Knowledge and Skills and indicated that this information demonstrates that more specific requirements are needed.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. A representative from the American Civil Liberties Union urged the SBOE to adopt rigorous standards to guard against future use of unconstitutional materials in public schools.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. An attorney indicated that based on his study and years of experience in the field he believes that using non-specific education standards for religious courses in public schools will result in lawsuits.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon the determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. An individual expressed the belief that setting up this type of course as an elective is very brave and asked the SBOE to create unbiased TEKS.

Response. The SBOE disagreed and took action to adopt the rule as filed as proposed. Based upon determination by the Texas Attorney General, the SBOE determined that the rule was sufficient to meet the requirements of the law.

Comment. A representative from the Free Market Foundation asked the SBOE to stick to their duties as an elected body, which is to follow what the law says and adopt the rule.

Response. The SBOE agreed and took action to adopt the rule as filed as proposed.

The new section is adopted under the Texas Education Code, §28.011, as added by House Bill 1287, 80th Texas Legislature, 2007, which authorizes the SBOE to adopt rules, subsequent to review of the proposal by the Attorney General, identifying the essential knowledge and skills of a course on the Bible's Hebrew Scriptures (Old Testament) and New Testament and their impact on the history and literature of Western Civilization.

The new section implements the Texas Education Code, §28.011.

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 August 12, 2008.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

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



## CHAPTER 110. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING

The State Board of Education (SBOE) adopts amendments to §§110.1, 110.21, and 110.41 and new §§110.10 - 110.20 and 110.30 - 110.34, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading. The amendments to §§110.1, 110.21, and 110.41 are adopted without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3115) and will not be republished. New §§110.10 - 110.20 and 110.30 - 110.34 are adopted with changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3115). The adopted amendments and new sections establish revised English language arts and reading TEKS for Kindergarten-Grade 8 and English I-IV for implementation beginning with the 2009-2010 school year in order to allow districts to begin preparing for implementation. Included in the revisions are amendments to specify that existing TEKS will be superseded by the revised TEKS once implemented.

The SBOE adopted the original TEKS for elementary, middle, and high school English language arts and reading courses to be effective September 1, 1998. The refinement and alignment of English language arts and reading TEKS began in 2005. In June 2006, the SBOE directed Texas Education Agency (TEA) staff to reconvene the review committees for further revision of the English language arts and reading TEKS. The committee was charged with making the TEKS more grade-level specific, less repetitive, and measurable at the state or local level. In September 2007, StandardsWork was hired as a facilitator through a request for qualifications process to assist with the completion of the revisions.

Proposed revisions, which included restructuring and revising knowledge and skills statements as well as student expectations for Kindergarten-Grade 8 and English I-IV, were presented to the SBOE for first reading and filing authorization on February 13, 2008. These revisions were based on recommendations made by educator review committees and compiled by the facilitator. At the special called February 13, 2008, meeting, the SBOE chair appointed a subcommittee to use the document compiled by the facilitator, input from all interested parties and expert reviewers, and the college readiness standards to prepare a document for consideration by the SBOE for first reading and filing authorization at the March 2008 SBOE meeting.

The subcommittee met on February 29, 2008, to appoint an expert committee to review proposed revisions to the English

language arts and reading TEKS and to discuss preliminary changes/suggestions to the most recent draft of the revised TEKS. The subcommittee met on March 14, 2008, to receive an update on the draft of the proposed revisions to the English language arts and reading TEKS, including recommendations of the expert reviewers. The subcommittee met again on March 19, 2008, to sign off on the final proposed revisions to the English language arts and reading TEKS prior to sending the document to the Committee of the Full Board for review. However, the subcommittee did not receive the document from the facilitator prior to the meeting, therefore, no action was taken. The subcommittee met on March 27, 2008, to sign off on the final proposed revisions to the English language arts and reading TEKS prior to sending the document to the Committee of the Full Board for review.

The Committee of the Full Board held a public hearing on the proposed revisions to 19 TAC Chapter 110, Subchapters A - C, on March 26, 2008. During the public hearing, a group of Texas educators presented a version of the March 19 draft with additional revisions for SBOE consideration. This document was referred to as the "yellow document."

At the March 28, 2008, meeting, the SBOE amended and approved proposed revisions to 19 TAC Chapter 110, Subchapters A - C, for first reading and filing authorization. During the March 2008 meeting, the SBOE also directed the facilitator to work with the yellow document and teacher work groups, including Hispanic experts Dr. Katherine Escamilla and Dr. Elena Izquierdo, to improve the March 19, 2008, StandardsWork document.

The Committee of the Full Board held a second public hearing on the proposed revisions to 19 TAC Chapter 110, Subchapters A - C, on May 21, 2008. At the May 23, 2008, meeting, the SBOE amended and approved the proposed revisions to 19 TAC Chapter 110, Subchapters A - C, for second reading and final adoption. Changes to the proposed revisions to 19 TAC Chapter 110 made by the SBOE at adoption include the following.

The introduction for each grade level was amended by adding new paragraphs that address instruction for English language learners.

The Kindergarten Reading/Comprehension of Literary Text/Theme and Genre and Reading/Comprehension of Informational Text/Expository Text standards were modified.

The Kindergarten-Grade 3 Reading/Beginning Reading Skills standard titles were modified.

The Grade 1 Reading/Beginning Reading Skills/Phonics standard was amended by adding 70 specific letter-sound correspondences.

The Listening and Speaking strand at all grade levels was amended by replacing language with standards written by the teacher work group.

The Oral and Written Conventions strand at all grade levels was amended by replacing language with standards written by the teacher work group. The Oral and Written Conventions strand was moved within the document to follow the Writing strand.

The Grade 3 Reading/Media Literacy standard was amended by replacing language with the Reading/Media Literacy standard.

The Grade 8 Oral and Written Conventions/Handwriting, Capitalization, and Punctuation standard was amended by replacing language with the Writing/Conventions of Language/Handwriting standard written by the teacher work group.

Separate figures identifying grade level reading comprehension strategies were added at each appropriate subchapter level.

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

Following is a summary of public comments and corresponding responses regarding the proposed revisions to 19 TAC Chapter 110, Subchapters A - C.

Comment. A community member commented that the current curriculum needs to be clarified.

Response. The SBOE agreed and took action to approve TEKS that were grade-level specific, less repetitive, and measurable at the state or local level.

Comment. Two community members commented that proposed revisions do not include effective teaching practices.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A parent commented that the TEKS must emphasize quality literature and written response.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A community member commented that the proposed revisions are too specific.

Agency Response. The SBOE disagreed. The charge from the SBOE to its appointed TEKS review committee required TEKS to be written that were grade-level specific.

Comment. A teacher commented that the proposed revisions look good.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher commented that to teach anything in isolation is a travesty and brain research shows it does not work.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A community member commented that the proposed TEKS are very limiting for children and learning.

Response. The SBOE disagreed. The charge from the SBOE to its appointed TEKS review committee required TEKS to be written that were grade-level specific.

Comment. A community member asked the SBOE to adopt the proposed revisions currently posted on the *Texas Register*.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. An educator and a teacher commented that the document is well organized and complete.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher commented that the changes explain what is expected in more detail.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher commented that the proposed revisions are much more in line with what needs to go on in classrooms and asked the SBOE to please consider them carefully.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A parent commented that the proposed changes are good changes and that it is necessary to make certain that all students can read and write well with good grammar skills.

Response. The SBOE agreed and took action to adopt TEKS that address the skills needed to gain a thorough knowledge of the English language.

Comment. An educator commented that the TEKS for second grade look appropriate.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. An educator commented that the draft posted in the *Texas Register* is much better aligned than the first couple of proposed revisions.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher expressed support for the *Texas Register* proposed revised TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two administrators, 68 educators, 12 teachers, seven parents, and 34 community members expressed opposition to the proposed revised TEKS.

Response. The SBOE disagreed and determined that the proposed revised TEKS were more grade level specific, less repetitive, and more measurable. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. Based on a departmental meeting at a Houston high school, comments were received indicating that teachers prefer the "yellow document" because it includes more grammar presented at the application level and comprehension strategies for struggling readers (especially at the high school level).

Response. The SBOE disagreed. The knowledge and skills statements for the Oral and Written Convention strands state that the students will "understand the function of and use" conventions while speaking and reading. The SBOE took action to adoption to add reading comprehension strategies as separate figures at each appropriate subchapter level.

Comment. Three educators, two parents, and a community member commented that adoption of the document posted on the *Texas Register* will adversely affect instruction, testing, and textbook development for the next ten years.

Response. The SBOE disagreed and took action to approve TEKS that were grade-level specific, less repetitive, and measurable at the state or local level. Textbooks for the classrooms and mandated statewide assessments must, by rule, be based upon the TEKS.

Comment. A teacher expressed preference for the existing English language arts and reading TEKS and indicated that only minor changes to the original TEKS were necessary.

Response. The SBOE disagreed and took action to approve TEKS that were grade-level specific, less repetitive, and measurable at the state or local level.

Comment. Eleven community members expressed opposition to suggestions from some SBOE members.

Response. The SBOE disagreed and determined that the proposed revised TEKS were more grade level specific, less repetitive, and more measurable. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. An educator commented that the proposed changes in the TEKS move backwards rather than forward and that the 8th Grade TEKS are watered down.

Response. The SBOE disagreed and determined that the proposed revised TEKS were more grade level specific, less repetitive, and more measurable. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. An educator commented that the proposed revisions border, if not completely cross over, to insanity.

Response. The SBOE disagreed and determined that the proposed revised TEKS were more grade level specific, less repetitive, and more measurable. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. Ten community members expressed support for suggestions from some SBOE members.

Response. The SBOE disagreed and determined that the proposed revised TEKS were more grade level specific, less repetitive, and more measurable. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. An educator commented that there is no multi-cultural connection.

Response. The SBOE disagreed and took action to approve TEKS that include a new knowledge and skills statement identified as "Comprehension of Information Text/Culture and History." The new TEKS provide opportunities to read classical and contemporary literature from diverse cultures. The TEKS include a world literature focus at English I and II, an American literature focus at English III, and a British literature focus at English IV.

Comment. A parent commented that there are limited multi-cultural perspectives or sensitivity in the process.

Response. The SBOE disagreed and took action to approve TEKS that include a new knowledge and skills statement identified as "Comprehension of Information Text/Culture and History." The new TEKS provide opportunities to read classical and contemporary literature from diverse cultures. The TEKS include a world literature focus at English I and II, an American literature focus at English III, and a British literature focus at English IV.

Comment. Two teachers expressed the belief that culturally diverse materials and topics have been left out of reading and writing strands.

Response. The SBOE disagreed and took action to approve TEKS that include a new knowledge and skills statement identified as "Comprehension of Information Text/Culture and History." The new TEKS provide opportunities to read classical and contemporary literature from diverse cultures. The TEKS include a world literature focus at English I and II, an American literature focus at English III, and a British literature focus at English IV.

Comment. An educator commented that mention of English Language Learners (ELLs) is minimal.

Response. The SBOE agreed and took action to add new language to the introductions of each grade and course of the new TEKS to specifically address the learning needs of ELLs.

Comment. An educator asked if the Spanish Language Arts TEKS are up for revision.

Response. The Spanish Language Arts TEKS are also being revised to align with the English language arts and reading TEKS and have been approved by the SBOE for first reading and filing authorization in July 2008.

Comment. A teacher commented that mention of technology is minimal.

Response. The SBOE disagreed. The new TEKS provide opportunities for students to use technology in multiple contexts (i.e., to develop vocabulary, to create multimedia presentations, to conduct research, etc.).

Comment. Nine educators, two parents, and seven community members expressed the belief that there is a lack of vertical alignment across grade levels.

Response. The SBOE disagreed. The new TEKS are framed with the same knowledge and skills statements for Kindergarten-Grade 12. The student expectations were added with grade-level specificity to scaffold learning.

Comment. Six teachers and a community member requested that the document be aligned across grade levels, eliminating gaps and adjusting for appropriate levels of difficulty.

Response. The SBOE disagreed. The new TEKS are framed with the same knowledge and skills statements for Kindergarten-Grade 12. The student expectations were added with grade-level specificity to scaffold learning.

Comment. Five teachers and a community member requested that the document be aligned with college readiness standards and Prekindergarten guidelines.

Response. The SBOE agreed. The Prekindergarten guidelines and college readiness standards were provided as resources to the work group members as they worked on the document. The facilitator noted that the document was aligned. A committee will examine the TEKS for gaps in alignment with the college readiness standards.

Comment. Two educators and six community members indicated that grade-level vertical alignment is necessary.

Response. The SBOE agreed. The new TEKS are framed with the same knowledge and skills statements for Kindergarten-Grade 12. The student expectations were added with grade-level specificity to scaffold learning.

Comment. A teacher and a community member asked the SBOE to align skills, eliminate gaps, and adjust appropriate levels of difficulty.

Response. The SBOE disagreed. The new TEKS are framed with the same knowledge and skills statements for Kindergarten-Grade 12.

Comment. A teacher and a parent asked that alignment gaps be addressed.

Response. The SBOE agreed. The new TEKS are framed with the same knowledge and skills statements for Kindergarten-Grade 12. The student expectations were added with grade-level specificity to scaffold learning.

Comment. An educator commented that the standards need to be more grade specific and less repetitive.

Response. The SBOE agreed and took action to approve TEKS that were grade-level specific, less repetitive, and measurable at the state or local level.

Comment. A community member asked that spoken language be improved.

Response. The SBOE agreed. The new TEKS, through the Listening and Speaking and Oral and Written Conventions strands, address the skills needed to gain a thorough knowledge of the English language.

Comment. A community member requested that the SBOE press for correct English to be taught and used.

Response. The SBOE agreed. The new TEKS address the skills needed to gain a thorough knowledge of the English language.

Comment. A community member expressed the belief that thorough knowledge of the English language is necessary for success.

Response. The SBOE agreed. The new TEKS address the skills needed to gain a thorough knowledge of the English language.

Comment. A parent asked the SBOE to avoid antiquated teaching methods, including required reading lists, formulaic writing, and boring grammar drills.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A teacher commented that the proposed TEKS do not align with the Texas Assessment of Knowledge and Skills (TAKS).

Response. The SBOE disagreed. The TAKS will be adjusted to align with newly revised TEKS.

Comment. An educator commented that language arts teachers should not be held responsible for social studies curriculum.

Response. The SBOE agreed and took action to remove language regarding connections to social studies curriculum from the final version of the TEKS.

Comment. A teacher commented that the "Viewing and Representing" TEKS appear to be missing or to have been moved to another strand.

Response. The SBOE disagreed that the "Viewing and Representing" TEKS are missing and agreed that they have been moved. The Media Literacy standards, an iteration of the previous Viewing and Representing standards, appear in the reading strand of the new TEKS.

Comment. A teacher commented that students need to reflect on their own experiences, thoughts, and ideas.

Response. The SBOE agreed. The writing strand contains a student expectation stating that students will write to reflect upon personal experiences.

Comment. A teacher would like to teach or tutor in the proposed program.

Response. This comment is not responsive to the proposed rule-making.

Comment. A community member commented that current education problems stem from social, cultural, and economic issues and veteran teachers leaving the profession.

Response. This comment is not responsive to the proposed rule-making.

Comment. An educator commented that while the new specificity is a positive improvement, the instructional targets do not build upon each other as they have in the past.

Response. The SBOE disagreed. The new TEKS are framed with the same knowledge and skills statements for Kindergarten-Grade 12. The student expectations were added with grade-level specificity to scaffold learning.

Comment. An educator commented that it would be beneficial if the Greek and Latin roots and prefixes were covered in each grade.

Response. The SBOE agreed. Greek and Latin roots and prefixes are addressed in the Reading/Beginning Reading Skills/Phonics strand in Grades 2 and 3 and in the Reading/Vocabulary Development strand in Grades 4 through 12.

Comment. An educator requested that the statement "Students utilize comprehension strategies within and between texts" be added.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level, including reference to "between and across texts" in Grades 5-8.

Comment. An educator asked that specifying a particular genre such as "adventure" be removed from comprehension/fiction in English I.

Response. The SBOE agreed and took action to remove the reference to "adventure" in the TEKS.

Comment. An administrator, a teacher, and a parent commented that the current document omits the teaching of generally accepted and recognized comprehension processes including prediction, clarifying, summarizing, inferring, questioning, visualizing, making connections, determining important ideas, and understanding text structure across all grades.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A teacher and nine community members commented that comprehension must be part of the reading strand.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE

took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. An administrator commented that the proposal calls for students to learn how to infer the importance of a setting in a story in one grade level, visualize the setting in the next grade, and then summarize the setting two grade levels later. The administrator expressed belief that this type of thinking isolates processes and strategies and directly contradicts how one actually comprehends texts.

Response. The SBOE agreed and determined that appropriate scaffolding of skills is present in the ELA/Reading TEKS.

Comment. A teacher and a parent asked that comprehension skills be continued beyond Grade 6.

Response. The SBOE agreed and took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. Five educators, a parent, and a community member requested that comprehension be added as a sub-strand of reading.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A teacher commented that the comprehension strands are repetitive, misaligned, confusing, and cumbersome. The teacher asked that they be incorporated into fewer strands.

Response. The SBOE agreed and took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. An educator and a parent commented that eliminating comprehension is a poor decision especially for students whose primary language is not English. They indicated that comprehension must be explicitly taught.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. An educator asked why a particular genre-epic tale was specified.

Response. The SBOE agreed and took action to remove references to specific stories from the TEKS.

Comment. An educator asked that recitation be removed as a student expectation and that structural elements of poetry be added.

Response. The SBOE agreed and took action to remove recitation of poetry from the TEKS. The TEKS include structural elements of poetry.

Comment. An educator requested that film be removed from the Reading/Comprehension/Drama strand.

Response. The SBOE disagreed. Film is only mentioned in Grade 6.

Comment. An educator requested that mysteries, science fiction, and historical fiction not be limited.

Response. The SBOE agreed and took action to remove references to specific genres of fiction from the TEKS.

Comment. Nine educators and two parents commented that reading comprehension should be a clearly defined strand.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. Forty-two educators, a parent, and five community members commented that explicit teaching of reading comprehension should be returned to all grades, Kindergarten-Grade 12.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. Regarding the TEKS for Grade 3, a teacher commented that students need to focus on foundations of reading comprehension before text analysis can begin.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. Eighteen educators, a parent, and eight community members commented that the TEKS should include a reading comprehension strand.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A teacher commented that in Grade 2 the reading comprehension statement should not be limited to plays and dramas. Students should read a variety of texts, including plays.

Response. The SBOE agreed and took action to adopt TEKS that include reading fables, legends, myths, stories, folktales, poetry, drama, literary nonfiction, expository texts, and procedural texts.

Comment. A teacher commented that the last statement of the sub-strand for Reading/Comprehension/Literary Nonfiction should be in Kindergarten and Grade 1, but not in Grade 2.

Response. The SBOE disagreed and determined that it is developmentally appropriate to begin these skills in Grade 2. The SBOE determined that appropriate scaffolding of skills was present in the ELA/Reading TEKS.

Comment. A teacher requested that examples listed in the Reading/Comprehension/Fiction statement for Grade 2 be omitted.

Response. The SBOE agreed and took action to delete all examples from the TEKS.

Comment. A teacher commented that students in Grade 2 should not be limited to fables and well-known stories when analyzing theme and genre.

Response. The SBOE agreed. Fables, legends, myths, stories, and folktales are the genres targeted when analyzing theme and genre at Grade 2.

Comment. Two teachers commented that reading comprehension should be addressed as a process.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A community member commented that reading comprehension and critical thinking skills should continue past Grade 6.

Response. The SBOE agreed. Comprehension is part of the knowledge and skills statements in reading for Kindergarten-Grade 12. The knowledge and skills statements typically begin with students understanding or analyzing followed by making inferences and drawing conclusions.

Comment. A teacher commented that in Grade 2 reading comprehension needs to be further developed to include student expectations that address strategies used to comprehend text that is heard, read, and viewed.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A teacher commented that Grade 3 reading comprehension needs to be further developed to include student expectations that address strategies used to comprehend text that is heard, read, and viewed.

Response. The SBOE disagreed with the placement of the reading comprehension strategies for elementary, middle, and high school within the non-figural text of the rules. Instead, the SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. Four community members commented that reading comprehension is not adequately addressed.

Response. The SBOE agreed and took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. One community member commented that proposed revisions do not include comprehension strategies.

Response. The SBOE agreed and took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A community member commented that reading comprehension skills are essential in developing writing and thinking skills.

Response. The SBOE agreed and took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. A teacher commented that in Grade 2 students should read to identify author's purpose. The teacher further commented that it does not seem appropriate for a student to also identify the topic.

Response. The SBOE disagreed and determined that appropriate scaffolding of skills was present in the ELA/Reading TEKS.

Comment. A teacher requested that the SBOE further develop Grade 3 reading to include a statement that students will use a variety of processes to respond to fiction, nonfiction, poetry, and drama.

Response. The SBOE disagreed and determined that appropriate scaffolding of skills was present in the ELA/Reading TEKS.

Comment. A teacher asked if a standard would be established for "grade level appropriate" text.

Response. The Reading/Fluency strand addresses grade level appropriate text beginning in Grade 1 and continuing through Grade 8.

Comment. Regarding the student expectation that students hold a book right side up, turn its pages correctly, and know that reading moves from top to bottom and left to right, a teacher commented that there are dyslexic students who read with greater comprehension when a book is held upside down and read right to left. The teacher stated that teachers should not automatically assume that students do not know the socially appropriate way to read.

Response. The SBOE disagreed. Accommodations and modifications to general education curriculum are not addressed in the ELA/Reading TEKS. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. An educator commented that it is necessary to concentrate on phonics and comprehension throughout the grade levels.

Response. The SBOE agreed. The SBOE determined that appropriate developmental skills were present in the ELA/Reading TEKS.

Comment. A community member asked the SBOE to include reading aloud to students at every grade level.

Response. The SBOE disagreed and determined that appropriate developmental skills were present in the ELA/Reading TEKS.

Comment. A parent expressed concern that proposed TEKS water down the teaching of the reading strategies that are on the TAKS test.

Response. The SBOE disagreed. Since the TAKS test is built upon the TEKS, a new test will be developed based on the new TEKS.

Comment. A teacher expressed pleasure in seeing that the new TEKS include syllable types.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. An educator requested that the SBOE change fluency to "Students read grade-level text with fluency and comprehension."

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A parent commented that the TEKS need to include a measurable standard of reading fluency at every grade level.

Response. The SBOE disagreed. The SBOE took recommendations from educators and content reviewers to remove a measurable standard of reading fluency before approving the TEKS.

Comment. A teacher commented that reading fluency should be defined by reader's expression, attention to punctuation, or number of words read per minute.

Response. The SBOE agreed with all suggestions except "words read correctly per minute." The SBOE took recommendations from educators and content reviewers to remove a measurable standard of reading fluency before approving the TEKS.

Comment. A teacher commented that fluency should continue to be emphasized after Grade 3.

Response. The SBOE agreed and took action to ensure fluency continues through Grade 8.

Comment. Eight educators and a parent commented that fluency should be addressed through middle school.

Response. The SBOE agreed and took action to ensure fluency continues through Grade 8.

Comment. Two educators commented that reading fluency is necessary for older students.

Response. The SBOE agreed and took action to ensure fluency continues through Grade 8.

Comment. An educator asked if the fluency rate is to be determined by the districts.

Response. The SBOE agreed and approved the TEKS without a specific "words read correctly per minute."

Comment. A parent commented that reading and writing are not just skill sets but complex processes to be developed.

Response. The SBOE determined that appropriate scaffolding of skills and processes was present in the ELA/Reading TEKS.

Comment. An educator expressed pleasure in seeing reading lists gone.

Response. The SBOE agreed. The SBOE directed the commissioner of education to provide reading resources websites.

Comment. A parent expressed the belief that a list of suggested titles for every grade level is needed.

Response. The SBOE disagreed and determined that this decision was best left to local district control. The SBOE directed the commissioner of education to provide reading resources websites.

Comment. Three teachers and an administrator asked the SBOE to keep all reading and author lists out of the document.

Response. The SBOE agreed. The SBOE directed the commissioner of education to provide reading resources websites.

Comment. A community member expressed the belief that there should be a book list of "required" and "tolerated" books.

Response. The SBOE disagreed and determined that this decision was best left to local district control. The SBOE directed the commissioner of education to provide reading resources websites.

Comment. A teacher requested that commas be introduced after introductory phrases and dependent adverbial clauses in Grade 6 and reviewed in Grade 7.

Response. The SBOE disagreed and determined that the skill should be continued in Grades 7 and 8 and maintained the in-



introduction of commas after introductory phrases and dependent adverbial clauses in the TEKS for Grades 7 and 8.

Comment. A teacher commented that Texas students are not able to organize thoughts and do not know the rules of mechanics, grammar, capitalization, and punctuation.

Response. The SBOE agreed. The SBOE adopted English language arts and reading TEKS with an Oral and Written Conventions strand and with many references to analyzing and making inferences.

Comment. Forty-three educators, one parent, and nine community members commented that composition and conventions should be included in one writing strand.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. A parent commented that oral and written conventions should be taught separately.

Response. The SBOE agreed and took action to include a separate strand for Oral and Written Conventions.

Comment. An educator, an administrator, and a community member commented that oral and written conventions should be integrated.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. Six teachers and a community member requested that the SBOE make conventions of oral and written language a sub-strand of composition.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. A teacher commented that in Grade 2 written conventions need to include a statement clarifying that the student is working with "one's own writing."

Response. The SBOE agreed and included language such as "students . . . in their own compositions" in the knowledge and skills statements for conventions.

Comment. A teacher commented that statements regarding written conventions should include ". . . within context of one's own writing."

Response. The SBOE agreed and included language such as "students . . . in their own compositions" in the knowledge and skills statements for conventions.

Comment. Two teachers commented that conventions need to be learned and practiced within the context for one's own writing.

Response. The SBOE agreed and included language such as "students . . . in their own compositions" in the knowledge and skills statements for conventions.

Comment. An educator commented that grammar is important but comprehension is more important.

Response. The SBOE disagreed and determined that both were important and approved the TEKS with an Oral and Written Con-

ventions strand. The SBOE took action to address reading comprehension strategies as separate figures adopted at each appropriate subchapter level.

Comment. Two educators commented that grammar cannot be taught in isolation. The educator suggested moving oral and written conventions into the writing strand because grammar in isolation (drills) does not transfer into writing skills.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. An educator suggested adding parts of speech at Grade 6: prepositions, adverbs, and coordinating connectives.

Response. The SBOE disagreed and noted that coordinating connectives were introduced in Grade 3, and that prepositions and adverbs were taught in Grade 6.

Comment. An educator suggested adding sentence types at Grade 6: imperative, declarative, etc.

Response. The SBOE disagreed and noted that declarative and interrogative sentences were introduced in Grade 2.

Comment. Twenty-three educators, seven parents, and 15 community members commented that grammar should be included in writing.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. One educator and ten community members commented that grammar and writing should be in the same strand.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. A teacher and four community members asked the SBOE to keep grammar separate.

Response. The SBOE agreed and took action to include a separate strand for Oral and Written Conventions.

Comment. An administrator commented that the proposed standards ignore at least 50 years of research on grammar instruction.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a separate strand for Oral and Written Conventions.

Comment. An administrator commented that drilling the basics does not achieve desired results and does not transfer to writing.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. An administrator commented that grammar should be taught in context.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A community member commented that curriculum should teach basic principles of English language, including grammar and punctuation.

Response. The SBOE agreed and took action to include a separate strand for Oral and Written Conventions.

Comment. A parent commented that grammar instruction should be included so that students can learn to respect other students.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A teacher and an administrator commented that grammar should not be taught as an isolated process.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A teacher commented that "non-count nouns" need to be defined.

Response. The SBOE disagreed. Definition of the standards should occur during curriculum development and professional development. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. A parent asked the SBOE to bring back grammar instruction.

Response. The SBOE agreed and took action to include a strand for Oral and Written Conventions.

Comment. A community member asked the SBOE to concentrate on the basics and teach proper grammar.

Response. The SBOE agreed and took action to include a strand for Oral and Written Conventions.

Comment. A community member commented that teaching grammar in isolation is ineffective and detrimental to students.

Response. The SBOE disagreed and determined that Oral and Written Conventions should be a separate and distinct strand. The SBOE took action to include a strand for Oral and Written Conventions.

Comment. A community member commented that students should learn the basics, especially proper grammar.

Response. The SBOE agreed and took action to include a strand for Oral and Written Conventions.

Comment. A community member commented that expecting first graders to identify adverbs and prepositions is inappropriate.

Response. The SBOE disagreed and determined that the ELAR/Reading TEKS were developmentally appropriate.

Comment. A teacher commented that progressive and emphatic verbs should not be taught in Grade 8.

Response. The SBOE agreed and included only progressive verbs in the Grade 8 TEKS.

Comment. An educator supported a renewed emphasis on the importance of proper English grammar, spelling, and punctuation.

Response. The SBOE agreed and took action to include a strand for Oral and Written Conventions.

Comment. A teacher commented that students should not need to identify specific parts of speech just to identify the parts.

Response. The SBOE disagreed and determined that identification of parts of speech is an important skill for students to learn. The SBOE took action to include a strand for Oral and Written Conventions.

Comment. A parent commented that grammar and spelling are the basis for good writing skills.

Response. The SBOE agreed and took action to include a strand for Oral and Written Conventions.

Comment. A parent commented that media literacy should be in the reading strand.

Response. The SBOE agreed and took action to approve the placement of media literacy in the reading strand.

Comment. A teacher commented that media literacy should be a separate strand.

Response. The SBOE disagreed and determined that media literacy is more appropriately placed in the reading strand. The SBOE took action to approve the placement of media literacy in the reading strand.

Comment. A teacher commented that teaching Roman, Greek, and Norse mythology to Grade 3 students is developmentally inappropriate.

Response. The SBOE agreed. The standards for Grade 3 only mention "myths."

Comment. An educator liked that non-fiction was mentioned.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A parent commented that teaching skills in isolation is a giant step backwards.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A teacher commented that for Grade 2 spelling verbiage should be included to explain why correct spelling and grammar are necessary.

Response. The SBOE disagreed. The ELA/Reading TEKS specify what to teach not why content is taught.

Comment. A teacher commented that there are developmentally inappropriate spelling and vocabulary tasks particularly at Kindergarten-Grade 2.

Response. The SBOE disagreed and determined that the ELA/Reading TEKS include appropriate scaffolding of skills.

Comment. An educator asked the SBOE to change vocabulary development to read: "Students learn new vocabulary from a variety of sources, using it effectively when reading and writing."

Response. The SBOE agreed and adopted the knowledge and skills statement to read: "Students understand new vocabulary and use it when reading and writing."

Comment. A teacher commented that Grade 2 vocabulary instruction does not need emphasis on Greek, Latin, or other linguistic roots and affixes.

Response. The SBOE disagreed. Student expectations simply make reference to prefixes and suffixes as they determine meaning.

Comment. A teacher commented that for Grade 2 vocabulary students should read daily from self-selected materials to increase fluency, build background knowledge, and extend vocabulary.

Response. The SBOE agreed on wording for the knowledge and skills statement on independent reading that indicated sustained periods of time.

Comment. A teacher commented that Grade 2 vocabulary development needs to state that students will increase sight, reading, and writing vocabulary through reading, word study, listening, discussion, book talks, book clubs, viewing, role play, and study of author's craft.

Response. The SBOE disagreed and determined that skills present in the ELA/Reading TEKS were developmentally appropriate.

Comment. An educator was pleased to see a wider array of types of writing at English III.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. An educator commented that for Writing/Literary Texts, "creative writing" should be eliminated and "writing a poem every year" should be removed.

Response. The SBOE disagreed and determined that in order to be college ready students should be exposed to all modalities of writing. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. A parent commented that modes of writing should be reinstated, including persuasive and expository/procedural writing.

Response. The SBOE agreed and took action to include persuasive and procedural writing where developmentally appropriate.

Comment. A teacher commented that formulaic writing in upper elementary grades should be eliminated.

Response. The SBOE agreed and approved the knowledge and skills statement for the writing process in Kindergarten-Grade 12.

Comment. A teacher commented that having students compose poems and fiction each year is counterproductive.

Response. The SBOE disagreed and determined that in order to be college ready students should be exposed to all modalities of writing. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. A teacher commented that Kindergarten students will not be able to write short poems.

Response. The SBOE disagreed. It will be up to each teacher to determine the level of support when implementing the standards. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. A teacher commented that students should work with their own written compositions to improve vocabulary development and word choice.

Response. The SBOE agreed and determined that the standards clearly articulated that the compositions were the student's personal writing.

Comment. A teacher asked the SBOE to continue personal narrative beyond Grade 6.

Response. The SBOE agreed. The knowledge and skills statement regarding writing about personal experiences continues through Grade 8.

Comment. A teacher commented that students need graphic organizers to organize thoughts and ideas.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. A teacher commented that Grade 2 students should be exposed to a variety of writing modes.

Response. The SBOE agreed. According to the approved standards for ELA/Reading TEKS, Grade 2 students will write stories, poems, compositions, short letters, brief comments on texts, and persuasive pieces of writing.

Comment. An educator commented that there are too many writing projects on top of the proposed reading TEKS.

Response. The SBOE disagreed and determined that the student expectations were developmentally appropriate.

Comment. A teacher commented that students should not always be required to write specific types of text just for the sake of writing them.

Response. The SBOE disagreed and determined that specific types of text were important to the developmental learning experience of the student since the skills are scaffolded from one grade to the next.

Comment. A teacher commented that Grade 3 students should be exposed to a variety of writing modes.

Response. The SBOE agreed. The ELA/Reading TEKS provide multiple writing experiences at every grade level for every student.

Comment. A teacher asked the SBOE to eliminate use of encyclopedia entries as sources for nonfiction.

Response. The SBOE agreed and took action to remove references to specific content when referencing genres.

Comment. An educator commented that it is pointless to write drama.

Response. The SBOE disagreed and determined that in order to be college ready students should be exposed to all modalities of writing. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. A teacher commented that recitation does not need to occur in every grade.

Response. The SBOE agreed and took action to remove recitation of poetry from the TEKS.

Comment. Two educators asked the SBOE to remove analogies (part to whole), but keep analogies used within a narrative or expository structure.

Response. The SBOE disagreed and determined that a variety of approaches to vocabulary development is important in sup-

porting college readiness. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. An educator commented that there is too much emphasis on speech because there is a speech class.

Response. The SBOE agreed and took action to reduce the knowledge and skills statements regarding speaking.

Comment. A teacher commented that speech requirements should be taught in the required speech class and not duplicated in English.

Response. The SBOE disagreed and recognized the importance of speaking and listening to the overall education of a student; however, the SBOE agreed to reduce the knowledge and skills statements regarding speaking.

Comment. A teacher commented that TAKS should be abolished.

Agency Response. This comment is not responsive to the proposed rulemaking.

Comment. A community member commented that educators are pressured to teach to the test.

Response. This comment is not responsive to the proposed rulemaking.

Comment. An educator commented that educators should be making decisions about what is to be taught.

Response. The SBOE disagreed. Pursuant to the TEC, §7.102(c)(4), and §28.002, the SBOE is required to identify the TEKS for each subject of the required curriculum.

Comment. Five educators and two community members expressed belief that experienced educators should be allowed to provide input.

Response. The SBOE agreed. The SBOE nominated a committee of educators to work on the standards, conducted two public hearings, afforded opportunities at each SBOE meeting for testimony, and published the proposed revisions in the *Texas Register* for public comment.

Comment. Two teachers and a parent asked the SBOE to follow the advice of the work groups and coalition.

Response. The SBOE agreed. The SBOE nominated a committee of educators to work on the standards, conducted two public hearings, afforded opportunities at each SBOE meeting for testimony, and published the proposed revisions in the *Texas Register* for public comment.

Comment. A community member commented that SBOE members should recognize education research and receive input from educators.

Response. The SBOE agreed. The SBOE nominated a committee of educators to work on the standards, conducted two public hearings, afforded opportunities at each SBOE meeting for testimony, and published the proposed revisions in the *Texas Register* for public comment.

Comment. One hundred and twenty-two educators, an administrator, 17 parents, and 74 community members commented in support proposed revisions recommended by work groups.

Response. The SBOE agreed. The SBOE nominated a committee of educators to work on the standards, and the SBOE reviewed and considered the work throughout the process.

Comment. A parent asked the SBOE not to disregard the work of teachers in this process.

Response. The SBOE agreed and took action to adopt TEKS based on recommendations made by teachers appointed to committees to review and recommend revisions to the TEKS.

Comment. An educator asked the SBOE to allow Grade 8 teachers to write the curriculum for Grade 8 students.

Response. The SBOE agreed and nominated committees of educators based on grade levels of expertise to work on recommendations to the standards for each grade level.

Comment. A teacher commented that an expert review panel should be culturally diverse.

Response. The SBOE agreed. Expert review panels throughout the process included Hispanic and African-American experts.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§110.1, 110.10 - 110.16

The amendment and new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment and new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

*§110.10. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Elementary, Beginning with School Year 2009-2010.*

(a) The provisions of §§110.11 - 110.16 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year and at that time shall supersede §§110.2 - 110.7 of this subchapter.

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §110.10(b)

*§110.11. English Language Arts and Reading, Kindergarten, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The Reading strand is structured to reflect the major topic areas of the National

Reading Panel Report. In Kindergarten, students engage in activities that build on their natural curiosity and prior knowledge to develop their reading, writing, and oral language skills.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Kindergarten as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how English is written and printed. Students are expected to:

(A) recognize that spoken words can be represented by print for communication;

(B) identify upper- and lower-case letters;

(C) demonstrate the one-to-one correspondence between a spoken word and a printed word in text;

(D) recognize the difference between a letter and a printed word;

(E) recognize that sentences are comprised of words separated by spaces and demonstrate the awareness of word boundaries (e.g., through kinesthetic or tactile actions such as clapping and jumping);

(F) hold a book right side up, turn its pages correctly, and know that reading moves from top to bottom and left to right; and

(G) identify different parts of a book (e.g., front and back covers, title page).

(2) Reading/Beginning Reading Skills/Phonological Awareness. Students display phonological awareness. Students are expected to:

(A) identify a sentence made up of a group of words;

(B) identify syllables in spoken words;

(C) orally generate rhymes in response to spoken words (e.g., "What rhymes with hat?");

(D) distinguish orally presented rhyming pairs of words from non-rhyming pairs;

(E) recognize spoken alliteration or groups of words that begin with the same spoken onset or initial sound (e.g., "baby boy bounces the ball");

(F) blend spoken onsets and rimes to form simple words (e.g., onset/c/ and rime/at/ make cat);

(G) blend spoken phonemes to form one-syllable words (e.g., /m/.../a/.../n/ says man);

(H) isolate the initial sound in one-syllable spoken words; and

(I) segment spoken one-syllable words into two to three phonemes (e.g., dog:/d/.../o/.../g/).

(3) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. Students are expected to:

(A) identify the common sounds that letters represent;

(B) use knowledge of letter-sound relationships to decode regular words in text and independent of content (e.g., VC, CVC, CCVC, and CVCC words);

(C) recognize that new words are created when letters are changed, added, or deleted; and

(D) identify and read at least 25 high-frequency words from a commonly used list.

(4) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) predict what might happen next in text based on the cover, title, and illustrations; and

(B) ask and respond to questions about texts read aloud.

(5) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. Students are expected to:

(A) identify and use words that name actions, directions, positions, sequences, and locations;

(B) recognize that compound words are made up of shorter words;

(C) identify and sort pictures of objects into conceptual categories (e.g., colors, shapes, textures); and

(D) use a picture dictionary to find words.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) identify elements of a story including setting, character, and key events;

(B) discuss the big idea (theme) of a well-known folktale or fable and connect it to personal experience;

(C) recognize sensory details; and

(D) recognize recurring phrases and characters in traditional fairy tales, lullabies, and folktales from various cultures.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to respond to rhythm and rhyme in poetry through identifying a regular beat and similarities in word sounds.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) retell a main event from a story read aloud; and

(B) describe characters in a story and the reasons for their actions.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic of an informational text heard.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text, and provide evidence from text to support their understanding. Students are expected to:

(A) identify the topic and details in expository text heard or read, referring to the words and/or illustrations;

(B) retell important facts in a text, heard or read;

(C) discuss the ways authors group information in text; and

(D) use titles and illustrations to make predictions about text.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow pictorial directions (e.g., recipes, science experiments); and

(B) identify the meaning of specific signs (e.g., traffic signs, warning signs).

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students (with adult assistance) are expected to:

(A) identify different forms of media (e.g., advertisements, newspapers, radio programs); and

(B) identify techniques used in media (e.g., sound, movement).

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students (with adult assistance) are expected to:

(A) plan a first draft by generating ideas for writing through class discussion;

(B) develop drafts by sequencing the action or details in the story;

(C) revise drafts by adding details or sentences;

(D) edit drafts by leaving spaces between letters and words; and

(E) share writing with others.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) dictate or write sentences to tell a story and put the sentences in chronological sequence; and

(B) write short poems.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to dictate or write information for lists, captions, or invitations.

(16) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking (with adult assistance):

(i) past and future tenses when speaking;

(ii) nouns (singular/plural);

(iii) descriptive words;

(iv) prepositions and simple prepositional phrases appropriately when speaking or writing (e.g., in, on, under, over); and

(v) pronouns (e.g., I, me);

(B) speak in complete sentences to communicate; and

(C) use complete simple sentences.

(17) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) form upper- and lower-case letters legibly using the basic conventions of print (left-to-right and top-to-bottom progression);

(B) capitalize the first letter in a sentence; and

(C) use punctuation at the end of a sentence.

(18) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use phonological knowledge to match sounds to letters;

(B) use letter-sound correspondences to spell consonant-vowel-consonant (CVC) words (e.g., "cut"); and

(C) write one's own name.

(19) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students (with adult assistance) are expected to:

(A) ask questions about topics of class-wide interest; and

(B) decide what sources or people in the classroom, school, library, or home can answer these questions.

(20) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students (with adult assistance) are expected to:

(A) gather evidence from provided text sources; and

(B) use pictures in conjunction with writing when documenting research.

(21) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively by facing speakers and asking questions to clarify information; and

(B) follow oral directions that involve a short related sequence of actions.

(22) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas by speaking audibly and clearly using the conventions of language.

(23) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including taking turns and speaking one at a time.

§110.12. *English Language Arts and Reading, Grade 1, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where

students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The Reading strand is structured to reflect the major topic areas of the National Reading Panel Report. In first grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write and read (or be read to) on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in Grade 1 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how English is written and printed. Students are expected to:

(A) recognize that spoken words are represented in written English by specific sequences of letters;

(B) identify upper- and lower-case letters;

(C) sequence the letters of the alphabet;

(D) recognize the distinguishing features of a sentence (e.g., capitalization of first word, ending punctuation);

(E) read texts by moving from top to bottom of the page and tracking words from left to right with return sweep; and

(F) identify the information that different parts of a book provide (e.g., title, author, illustrator, table of contents).

(2) Reading/Beginning Reading Skills/Phonological Awareness. Students display phonological awareness. Students are expected to:

(A) orally generate a series of original rhyming words using a variety of phonograms (e.g., -ake, -ant, -ain) and consonant blends (e.g., bl, st, tr);

(B) distinguish between long- and short-vowel sounds in spoken one-syllable words (e.g., bit/bite);

(C) recognize the change in a spoken word when a specified phoneme is added, changed, or removed (e.g., /b/l/o/w/ to /g/l/o/w/);

(D) blend spoken phonemes to form one- and two-syllable words, including consonant blends (e.g., spr);

(E) isolate initial, medial, and final sounds in one-syllable spoken words; and

(F) segment spoken one-syllable words of three to five phonemes into individual phonemes (e.g., splat = /s/p/l/a/t/).

(3) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) decode words in context and in isolation by applying common letter-sound correspondences, including:

(i) single letters (consonants) including b, c=/k/, c=/s/, d, f, g=/g/ (hard), g=/j/ (soft), h, j, k, l, m, n, p, qu=/kw/, r, s=/s/, s=/z/, t, v, w, x=/ks/, y, and z;

(ii) single letters (vowels) including short a, short e, short i, short o, short u, long a (a-e), long e (e), long i (i-e), long o (o-e), long u (u-e), y=long e, and y=long i;

(iii) consonant blends (e.g., bl, st);

(iv) consonant digraphs including ch, tch, sh, th=as in thing, wh, ng, ck, kn, -dge, and ph;

(v) vowel digraphs including oo as in foot, oo as in moon, ea as in eat, ea as in bread, ee, ow as in how, ow as in snow, ou as in out, ay, ai, aw, au, ew, oa, ie as in chief, ie as in pie, and -igh; and

(vi) vowel diphthongs including oy, oi, ou, and ow;

(B) combine sounds from letters and common spelling patterns (e.g., consonant blends, long- and short-vowel patterns) to create recognizable words;

(C) use common syllabication patterns to decode words, including:

(i) closed syllable (CVC) (e.g., mat, rab-bit);

(ii) open syllable (CV) (e.g., he, ba-by);

(iii) final stable syllable (e.g., ap-ple, a-ble);

(iv) vowel-consonant-silent "e" words (VCe) (e.g., kite, hide);

(v) vowel digraphs and diphthongs (e.g., boy-hood, oat-meal); and

(vi) r-controlled vowel sounds (e.g., tar); including er, ir, ur, ar, and or);

(D) decode words with common spelling patterns (e.g., -ink, -onk, -ick);

(E) read base words with inflectional endings (e.g., plurals, past tenses);

(F) use knowledge of the meaning of base words to identify and read common compound words (e.g., football, popcorn, daydream);

(G) identify and read contractions (e.g., isn't, can't);

(H) identify and read at least 100 high-frequency words from a commonly used list; and

(I) monitor accuracy of decoding.

(4) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) confirm predictions about what will happen next in text by "reading the part that tells";

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(5) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(6) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) identify words that name actions (verbs) and words that name persons, places, or things (nouns);

(B) determine the meaning of compound words using knowledge of the meaning of their individual component words (e.g., lunchtime);

(C) determine what words mean from how they are used in a sentence, either heard or read;

(D) identify and sort words into conceptual categories (e.g., opposites, living things); and

(E) alphabetize a series of words to the first or second letter and use a dictionary to find words.



(7) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) connect the meaning of a well-known story or fable to personal experiences; and

(B) explain the function of recurring phrases (e.g., "Once upon a time" or "They lived happily ever after") in traditional folk- and fairy tales.

(8) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to respond to and use rhythm, rhyme, and alliteration in poetry.

(9) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe the plot (problem and solution) and retell a story's beginning, middle, and end with attention to the sequence of events; and

(B) describe characters in a story and the reasons for their actions and feelings.

(10) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to determine whether a story is true or a fantasy and explain why.

(11) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to recognize sensory details in literary text.

(12) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time.

(13) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and explain the author's purpose in writing about the text.

(14) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) restate the main idea, heard or read;

(B) identify important facts or details in text, heard or read;

(C) retell the order of events in a text by referring to the words and/or illustrations; and

(D) use text features (e.g., title, tables of contents, illustrations) to locate specific information in text.

(15) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow written multi-step directions with picture cues to assist with understanding; and

(B) explain the meaning of specific signs and symbols (e.g., map features).

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) recognize different purposes of media (e.g., informational, entertainment) (with adult assistance); and

(B) identify techniques used in media (e.g., sound, movement).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);

(B) develop drafts by sequencing ideas through writing sentences;

(C) revise drafts by adding or deleting a word, phrase, or sentence;

(D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and

(E) publish and share writing with others.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write brief stories that include a beginning, middle, and end; and

(B) write short poems that convey sensory details.

(19) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write brief compositions about topics of interest to the student;

(B) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing); and

(C) write brief comments on literary or informational texts.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (past, present, and future);

(ii) nouns (singular/plural, common/proper);

- (iii) adjectives (e.g., descriptive: green, tall);
- (iv) adverbs (e.g., time: before, next);
- (v) prepositions and prepositional phrases;
- (vi) pronouns (e.g., I, me); and
- (vii) time-order transition words;

(B) speak in complete sentences with correct subject-verb agreement; and

(C) ask questions with appropriate subject-verb inversion.

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) form upper- and lower-case letters legibly in text, using the basic conventions of print (left-to-right and top-to-bottom progression), including spacing between words and sentences;

(B) recognize and use basic capitalization for:

- (i) the beginning of sentences;
- (ii) the pronoun "I"; and
- (iii) names of people; and

(C) recognize and use punctuation marks at the end of declarative, exclamatory, and interrogative sentences.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use phonological knowledge to match sounds to letters to construct known words;

(B) use letter-sound patterns to spell:

- (i) consonant-vowel-consonant (CVC) words;
- (ii) consonant-vowel-consonant-silent e (CVCe) words (e.g., "hope"); and
- (iii) one-syllable words with consonant blends (e.g., "drop");

(C) spell high-frequency words from a commonly used list;

(D) spell base words with inflectional endings (e.g., adding "s" to make words plurals); and

(E) use resources to find correct spellings.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students (with adult assistance) are expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer these questions.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students (with adult assistance) are expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students (with adult assistance) are expected to revise the topic as a result of answers to initial research questions.

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students (with adult assistance) are expected to create a visual display or dramatization to convey the results of the research.

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas about the topic under discussion, speaking clearly at an appropriate pace, using the conventions of language.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

*§110.13. English Language Arts and Reading, Grade 2, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The Reading strand is structured to reflect the major topic areas of the National Reading Panel Report. In second grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write and read (or be read to) on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simulta-

neously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 2 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how English is written and printed. Students are expected to distinguish features of a sentence (e.g., capitalization of first word, ending punctuation, commas, quotation marks).

(2) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) decode multisyllabic words in context and independent of context by applying common letter-sound correspondences including:

- (i) single letters (consonants and vowels);
- (ii) consonant blends (e.g., thr, spl);

- (iii) consonant digraphs (e.g., ng, ck, ph); and
- (iv) vowel digraphs (e.g., ie, ue, ew) and diphthongs (e.g., oi, ou);

(B) use common syllabication patterns to decode words including:

- (i) closed syllable (CVC) (e.g., pic-nic, mon-ster);
- (ii) open syllable (CV) (e.g., ti-ger);
- (iii) final stable syllable (e.g., sta-tion, tum-ble);
- (iv) vowel-consonant-silent "e" words (VCe) (e.g., in-vite, cape);
- (v) r-controlled vowels (e.g., per-fect, cor-ner); and
- (vi) vowel digraphs and diphthongs (e.g., boy-hood, oat-meal);

(C) decode words by applying knowledge of common spelling patterns (e.g., -ight, -ant);

(D) read words with common prefixes (e.g., un-, dis-) and suffixes (e.g., -ly, -less, -ful);

(E) identify and read abbreviations (e.g., Mr., Ave.);

(F) identify and read contractions (e.g., haven't, it's);

(G) identify and read at least 300 high-frequency words from a commonly used list; and

(H) monitor accuracy of decoding.

(3) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) use ideas (e.g., illustrations, titles, topic sentences, key words, and foreshadowing) to make and confirm predictions;

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts and support answers with evidence from text; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(4) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(5) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) use prefixes and suffixes to determine the meaning of words (e.g., allow/disallow);

(B) use context to determine the relevant meaning of unfamiliar words or multiple-meaning words;

(C) identify and use common words that are opposite (antonyms) or similar (synonyms) in meaning; and

(D) alphabetize a series of words and use a dictionary or a glossary to find words.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary con-

texts and provide evidence from the text to support their understanding. Students are expected to:

(A) identify moral lessons as themes in well-known fables, legends, myths, or stories; and

(B) compare different versions of the same story in traditional and contemporary folktales with respect to their characters, settings, and plot.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to describe how rhyme, rhythm, and repetition interact to create images in poetry.

(8) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to identify the elements of dialogue and use them in informal plays.

(9) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe similarities and differences in the plots and settings of several works by the same author; and

(B) describe main characters in works of fiction, including their traits, motivations, and feelings.

(10) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to distinguish between fiction and nonfiction.

(11) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to recognize that some words and phrases have literal and non-literal meanings (e.g., take steps).

(12) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning.

(13) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and explain the author's purpose in writing the text.

(14) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about and understand expository text and provide evidence from text to support their understanding. Students are expected to:

(A) identify the main idea in a text and distinguish it from the topic;

(B) locate the facts that are clearly stated in a text;

(C) describe the order of events or ideas in a text; and

(D) use text features (e.g., table of contents, index, headings) to locate specific information in text.

(15) Reading/Comprehension of Informational Text/Procedural Text. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow written multi-step directions; and

(B) use common graphic features to assist in the interpretation of text (e.g., captions, illustrations).

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) recognize different purposes of media (e.g., informational, entertainment);

(B) describe techniques used to create media messages (e.g., sound, graphics); and

(C) identify various written conventions for using digital media (e.g., e-mail, website, video game).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);

(B) develop drafts by sequencing ideas through writing sentences;

(C) revise drafts by adding or deleting words, phrases, or sentences;

(D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and

(E) publish and share writing with others.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write brief stories that include a beginning, middle, and end; and

(B) write short poems that convey sensory details.

(19) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write brief compositions about topics of interest to the student;

(B) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing); and

(C) write brief comments on literary or informational texts.

(20) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive statements about issues that are important to the student for the appropriate audience in the school, home, or local community.

(21) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking:

- (i) verbs (past, present, and future);
- (ii) nouns (singular/plural, common/proper);
- (iii) adjectives (e.g., descriptive: old, wonderful; articles: a, an, the);
- (iv) adverbs (e.g., time: before, next; manner: carefully, beautifully);
- (v) prepositions and prepositional phrases;
- (vi) pronouns (e.g., he, him); and
- (vii) time-order transition words;

(B) use complete sentences with correct subject-verb agreement; and

(C) distinguish among declarative and interrogative sentences.

(22) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly leaving appropriate margins for readability;

(B) use capitalization for:

- (i) proper nouns;
- (ii) months and days of the week; and
- (iii) the salutation and closing of a letter; and

(C) recognize and use punctuation marks, including:

- (i) ending punctuation in sentences;
- (ii) apostrophes and contractions; and
- (iii) apostrophes and possessives.

(23) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use phonological knowledge to match sounds to letters to construct unknown words;

(B) spell words with common orthographic patterns and rules:

- (i) complex consonants (e.g., hard and soft c and g, ck);
- (ii) r-controlled vowels;
- (iii) long vowels (e.g., VCe-hope); and
- (iv) vowel digraphs (e.g., oo-book, fool, ee-feet), diphthongs (e.g., ou-out, ow-cow, oi-coil, oy-toy);

(C) spell high-frequency words from a commonly used list;

(D) spell base words with inflectional endings (e.g., -ing and -ed);

(E) spell simple contractions (e.g., isn't, aren't, can't); and

(F) use resources to find correct spellings.

(24) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer these questions.

(25) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index, headings) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(26) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to revise the topic as a result of answers to initial research questions.

(27) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students (with adult assistance) are expected to create a visual display or dramatization to convey the results of the research.

(28) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(29) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas that focus on the topic under discussion, speaking clearly at an appropriate pace, using the conventions of language.

(30) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

§110.14. *English Language Arts and Reading, Grade 3, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a

variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In third grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 3 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help

them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. Students are expected to:

(A) decode multisyllabic words in context and independent of context by applying common spelling patterns including:

(i) dropping the final "e" and add endings such as -ing, -ed, or -able (e.g., use, using, used, usable);

(ii) doubling final consonants when adding an ending (e.g., hop to hopping);

(iii) changing the final "y" to "i" (e.g., baby to babies);

(iv) using knowledge of common prefixes and suffixes (e.g., dis-, -ly); and

(v) using knowledge of derivational affixes (e.g., -de, -ful, -able);

(B) use common syllabication patterns to decode words including:

(i) closed syllable (CVC) (e.g., mag-net, splen-did);

(ii) open syllable (CV) (e.g., ve-to);

(iii) final stable syllable (e.g., puz-zle, con-trac-tion);

(iv) r-controlled vowels (e.g., fer-ment, car-pool); and

(v) vowel digraphs and diphthongs (e.g., ei-ther);

(C) decode words applying knowledge of common spelling patterns (e.g., -eigh, -ough);

(D) identify and read contractions (e.g., I'd, won't); and

(E) monitor accuracy in decoding.

(2) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) use ideas (e.g., illustrations, titles, topic sentences, key words, and foreshadowing clues) to make and confirm predictions;

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts and support answers with evidence from text; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(3) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(4) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) identify the meaning of common prefixes (e.g., in-, dis-) and suffixes (e.g., -full, -less), and know how they change the meaning of roots;

(B) use context to determine the relevant meaning of unfamiliar words or distinguish among multiple meaning words and homographs;

(C) identify and use antonyms, synonyms, homographs, and homophones;

(D) identify and apply playful uses of language (e.g., tongue twisters, palindromes, riddles); and

(E) alphabetize a series of words to the third letter and use a dictionary or a glossary to determine the meanings, syllabication, and pronunciation of unknown words.

(5) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) paraphrase the themes and supporting details of fables, legends, myths, or stories; and

(B) compare and contrast the settings in myths and traditional folktales.

(6) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to describe the characteristics of various forms of poetry and how they create imagery (e.g., narrative poetry, lyrical poetry, humorous poetry, free verse).

(7) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain the elements of plot and character as presented through dialogue in scripts that are read, viewed, written, or performed.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) sequence and summarize the plot's main events and explain their influence on future events;

(B) describe the interaction of characters including their relationships and the changes they undergo; and

(C) identify whether the narrator or speaker of a story is first or third person.

(9) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to explain the difference in point of view between a biography and autobiography.

(10) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to identify language that creates a graphic visual experience and appeals to the senses.

(11) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(12) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and locate the author's stated purposes in writing the text.

(13) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) identify the details or facts that support the main idea;

(B) draw conclusions from the facts presented in text and support those assertions with textual evidence;

(C) identify explicit cause and effect relationships among ideas in texts; and

(D) use text features (e.g., bold print, captions, key words, italics) to locate information and make and verify predictions about contents of text.

(14) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to identify what the author is trying to persuade the reader to think or do.

(15) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow and explain a set of written multi-step directions; and

(B) locate and use specific information in graphic features of text.

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) understand how communication changes when moving from one genre of media to another;

(B) explain how various design techniques used in media influence the message (e.g., shape, color, sound); and

(C) compare various written conventions used for digital media (e.g., language in an informal e-mail vs. language in a web-based news article).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, use of simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) publish written work for a specific audience.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting; and

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse).

(19) Writing. Students write about their own experiences. Students are expected to write about important personal experiences.

(20) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create brief compositions that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts that demonstrate an understanding of the text.

(21) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and use supporting details.

(22) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (past, present, and future);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive: wooden, rectangular; limiting: this, that; articles: a, an, the);

(iv) adverbs (e.g., time: before, next; manner: carefully, beautifully);

(v) prepositions and prepositional phrases;

(vi) possessive pronouns (e.g., his, hers, theirs);

(vii) coordinating conjunctions (e.g., and, or, but); and

(viii) time-order transition words and transitions that indicate a conclusion;

(B) use the complete subject and the complete predicate in a sentence; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(23) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly in cursive script with spacing between words in a sentence;

(B) use capitalization for:

(i) geographical names and places;

(ii) historical periods; and

(iii) official titles of people;

(C) recognize and use punctuation marks including:

(i) apostrophes in contractions and possessives; and

(ii) commas in series and dates; and

(D) use correct mechanics including paragraph indentations.

(24) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use knowledge of letter sounds, word parts, word segmentation, and syllabication to spell;

(B) spell words with more advanced orthographic patterns and rules:

(i) consonant doubling when adding an ending;

(ii) dropping final "e" when endings are added (e.g., -ing, -ed);

(iii) changing y to i before adding an ending;

(iv) double consonants in middle of words;

(v) complex consonants (e.g., scr-, -dge, -tch); and

(vi) abstract vowels (e.g., ou as in could, touch, through, bought);

(C) spell high-frequency and compound words from a commonly used list;

(D) spell words with common syllable constructions (e.g., closed, open, final stable syllable);

(E) spell single syllable homophones (e.g., bear/bare; week/weak; road/rode);

(F) spell complex contractions (e.g., should've, won't); and

(G) use print and electronic resources to find and check correct spellings.

(25) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and



(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(26) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect information from multiple sources of information, both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, captions, key words, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(27) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(28) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(29) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers, ask relevant questions, and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(30) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to speak coherently about the topic under discussion, employing eye contact, speaking rate, volume, enunciation, and the conventions of language to communicate ideas effectively.

(31) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in teacher- and student-led discussions by posing and answering questions with appropriate detail and by providing suggestions that build upon the ideas of others.

*§110.15. English Language Arts and Reading, Grade 4, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fourth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 4 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use the context of the sentence (e.g., in-sentence example or definition) to determine the meaning of unfamiliar words or multiple meaning words;

(C) complete analogies using knowledge of antonyms and synonyms (e.g., boy:girl as male:\_\_\_ or girl:woman as boy:\_\_\_);

(D) identify the meaning of common idioms; and

(E) use a dictionary or glossary to determine the meanings, syllabication, and pronunciation of unknown words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) summarize and explain the lesson or message of a work of fiction as its theme; and

(B) compare and contrast the adventures or exploits of characters (e.g., the trickster) in traditional and classical literature.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to explain how the structural elements of poetry (e.g., rhyme, meter, stanzas, line breaks) relate to form (e.g., lyrical poetry, free verse).

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to describe the structural elements particular to dramatic literature.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) sequence and summarize the plot's main events and explain their influence on future events;

(B) describe the interaction of characters including their relationships and the changes they undergo; and

(C) identify whether the narrator or speaker of a story is first or third person.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify similarities and differences between the events and characters' experiences in a fictional work and the actual events and experiences described in an author's biography or autobiography.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to identify the author's use of similes and metaphors to produce imagery.

(9) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the difference between a stated and an implied purpose for an expository text.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main idea and supporting details in text in ways that maintain meaning;

(B) distinguish fact from opinion in a text and explain how to verify what is a fact;

(C) describe explicit and implicit relationships among ideas in texts organized by cause-and-effect, sequence, or comparison; and

(D) use multiple text features (e.g., guide words, topic and concluding sentences) to gain an overview of the contents of text and to locate information.

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to explain how an author uses language to present information to influence what the reader thinks or does.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) determine the sequence of activities needed to carry out a procedure (e.g., following a recipe); and

(B) explain factual information presented graphically (e.g., charts, diagrams, graphs, illustrations).

(14) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue

to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain the positive and negative impacts of advertisement techniques used in various genres of media to impact consumer behavior;

(B) explain how various design techniques used in media influence the message (e.g., pacing, close-ups, sound effects); and

(C) compare various written conventions used for digital media (e.g. language in an informal e-mail vs. language in a web-based news article).

(15) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, use of simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for a specific audience.

(16) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting; and

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse).

(17) Writing. Students write about their own experiences. Students are expected to write about important personal experiences.

(18) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create brief compositions that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(19) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and use supporting details.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (irregular verbs);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive, including purpose: sleeping bag, frying pan) and their comparative and superlative forms (e.g., fast, faster, fastest);

(iv) adverbs (e.g., frequency: usually, sometimes; intensity: almost, a lot);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) reflexive pronouns (e.g., myself, ourselves);

(vii) correlative conjunctions (e.g., either/or, neither/nor); and

(viii) use time-order transition words and transitions that indicate a conclusion;

(B) use the complete subject and the complete predicate in a sentence; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly by selecting cursive script or manuscript printing as appropriate;

(B) use capitalization for:

(i) historical events and documents;

(ii) titles of books, stories, and essays; and

(iii) languages, races, and nationalities; and

(C) recognize and use punctuation marks including:

(i) commas in compound sentences; and

(ii) quotation marks.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words with more advanced orthographic patterns and rules:

(i) plural rules (e.g., words ending in f as in leaf, leaves; adding -es);

(ii) irregular plurals (e.g., man/men, foot/feet, child/children);

(iii) double consonants in middle of words;

(iv) other ways to spell sh (e.g., -sion, -tion, -cian);

(v) silent letters (e.g., knee, wring);

and

(B) spell base words and roots with affixes (e.g., -ion, -ment, -ly, dis-, pre-);

(C) spell commonly used homophones (e.g., there, they're, their; two, too, to); and

(D) use spelling patterns and rules and print and electronic resources to determine and check correct spellings.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect information from multiple sources of information both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers, ask relevant questions, and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to express an opinion supported by accurate information, employing eye contact, speaking rate, volume, and enunciation, and the conventions of language to communicate ideas effectively.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in teacher- and student-led discussions by posing and answering questions with appropriate detail and by providing suggestions that build upon the ideas of others.

§110.16. *English Language Arts and Reading, Grade 5, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fifth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English lan-

guage learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 5 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., in-sentence restatement) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) produce analogies with known antonyms and synonyms;

(D) identify and explain the meaning of common idioms, adages, and other sayings; and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast the themes or moral lessons of several works of fiction from various cultures;

(B) describe the phenomena explained in origin myths from various cultures; and

(C) explain the effect of a historical event or movement on the theme of a work of literature.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze how poets use sound effects (e.g., alliteration, internal rhyme, onomatopoeia, rhyme scheme) to reinforce meaning in poems.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze the similarities and differences between an original text and its dramatic adaptation.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe incidents that advance the story or novel, explaining how each incident gives rise to or foreshadows future events;

(B) explain the roles and functions of characters in various plots, including their relationships and conflicts; and

(C) explain different forms of third-person points of view in stories.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify the literary language and devices used in biographies and autobiographies, including how authors present major events in a person's life.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to evaluate the impact of sensory details, imagery, and figurative language in literary text.

(9) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and summarize or paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to draw conclusions from the information presented by an author and evaluate how well the author's purpose was achieved.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas and supporting details in a text in ways that maintain meaning and logical order;

(B) determine the facts in text and verify them through established methods;

(C) analyze how the organizational pattern of a text (e.g., cause-and-effect, compare-and-contrast, sequential order, logical order, classification schemes) influences the relationships among the ideas;

(D) use multiple text features and graphics to gain an overview of the contents of text and to locate information; and

(E) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres.

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) identify the author's viewpoint or position and explain the basic relationships among ideas (e.g., parallelism, comparison, causality) in the argument; and

(B) recognize exaggerated, contradictory, or misleading statements in text.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) interpret details from procedural text to complete a task, solve a problem, or perform procedures; and

(B) interpret factual or quantitative information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(14) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain how messages conveyed in various forms of media are presented differently (e.g., documentaries, online information, televised news);

(B) consider the difference in techniques used in media (e.g., commercials, documentaries, news);

(C) identify the point of view of media presentations; and

(D) analyze various digital media venues for levels of formality and informality.

(15) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(16) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

(ii) figurative language (e.g., similes, metaphors); and

(iii) graphic elements (e.g., capital letters, line length).

(17) Writing. Students write about their own experiences. Students are expected to write a personal narrative that conveys thoughts and feelings about an experience.

(18) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create multi-paragraph essays to convey information about the topic that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write formal and informal letters that convey ideas, include important information, demonstrate a sense of closure, and use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(19) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (irregular verbs and active voice);

(ii) collective nouns (e.g., class, public);

(iii) adjectives (e.g., descriptive, including origins: French windows, American cars) and their comparative and superlative forms (e.g., good, better, best);

(iv) adverbs (e.g., frequency: usually, sometimes; intensity: almost, a lot);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) indefinite pronouns (e.g., all, both, nothing, anything);

(vii) subordinating conjunctions (e.g., while, because, although, if); and

(viii) transitional words (e.g., also, therefore);

(B) use the complete subject and the complete predicate in a sentence; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use capitalization for:

(i) abbreviations;

(ii) initials and acronyms; and

(iii) organizations;

(B) recognize and use punctuation marks including:

(i) commas in compound sentences; and

(ii) proper punctuation and spacing for quotations;

and

(C) use proper mechanics including italics and underlining for titles and emphasis.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words with more advanced orthographic patterns and rules:

(i) consonant changes (e.g., /t/ to /sh/ in select, selection; /k/ to /sh/ in music, musician);

(ii) vowel changes (e.g., long to short in crime, criminal; long to schwa in define, definition; short to schwa in legality, legal); and

(iii) silent and sounded consonants (e.g., haste, hasten; sign, signal; condemn, condemnation);

(B) spell words with:

(i) Greek Roots (e.g., tele, photo, graph, meter);

(ii) Latin Roots (e.g., spec, scribe, rupt, port, ject, dict);

(iii) Greek suffixes (e.g., -ology, -phobia, -ism, -ist); and

(iv) Latin derived suffixes (e.g., -able, -ible; -ance, -ence);

(C) differentiate between commonly confused terms (e.g., its, it's; affect, effect);

(D) use spelling patterns and rules and print and electronic resources to determine and check correct spellings; and

(E) know how to use the spell-check function in word processing while understanding its limitations.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering relevant information about the major research question.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect data from a range of print and electronic resources (e.g., reference texts, periodicals, web pages, online sources) and data from experts;

(B) differentiate between primary and secondary sources;

(C) record data, utilizing available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) refine the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance, validity, and reliability of sources for the research.

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose or perspective;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) determine both main and supporting ideas in the speaker's message.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to give organized presentations employing eye contact, speaking rate, volume, enunciation, natural gestures, and conventions of language to communicate ideas effectively.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in student-led discussions by eliciting and considering suggestions from other group members and by identifying points of agreement and disagreement.

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

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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§110.17 - 110.21

The new sections and amendment are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The new sections and amendment implement the Texas Education Code, §7.102(c)(4) and §28.002.

*§110.17. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Middle School, Beginning with School Year 2009-2010.*

(a) The provisions of §§110.18 - 110.20 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year and at that time shall supersede §§110.22 - 110.24 of this subchapter.

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §110.17(b)

*§110.18. English Language Arts and Reading, Grade 6, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In sixth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 6 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free



enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., cause and effect or compare and contrast organizational text structures) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) complete analogies that describe part to whole or whole to part (e.g., ink:pen as page: \_\_\_\_ or pen:ink as book: \_\_\_\_);

(D) explain the meaning of foreign words and phrases commonly used in written English (e.g., *RSVP*, *que sera sera*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) infer the implicit theme of a work of fiction, distinguishing theme from the topic;

(B) analyze the function of stylistic elements (e.g., magic helper, rule of three) in traditional and classical literature from various cultures; and

(C) compare and contrast the historical and cultural settings of two literary works.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to explain how figurative language (e.g., personification, metaphors, similes, hyperbole) contributes to the meaning of a poem.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain the similarities and differences in the setting, characters, and plot of a play and those in a film based upon the same story line.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the elements of plot development (e.g., rising action, turning point, climax, falling action, denouement) in various works of fiction;

(B) recognize dialect and conversational voice and explain how authors use dialect to convey character; and

(C) describe different forms of point-of-view, including first- and third-person.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify the literary language and devices used in memoirs and personal narratives and compare their characteristics with those of an autobiography.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain how authors create meaning through stylistic elements and figurative language emphasizing the use of personification, hyperbole, and refrains.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to compare and contrast the stated or implied purposes of different authors writing on the same topic.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas and supporting details in text, demonstrating an understanding that a summary does not include opinions;

(B) explain whether facts included in an argument are used for or against an issue;

(C) explain how different organizational patterns (e.g., proposition-and-support, problem-and-solution) develop the main idea and the author's viewpoint; and

(D) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres.

(11) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) compare and contrast the structure and viewpoints of two different authors writing for the same purpose, noting the stated claim and supporting evidence; and

(B) identify simply faulty reasoning used in persuasive texts.

(12) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow multi-tasked instructions to complete a task, solve a problem, or perform procedures; and

(B) interpret factual, quantitative, or technical information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(13) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain messages conveyed in various forms of media;

(B) recognize how various techniques influence viewers' emotions;

(C) critique persuasive techniques (e.g., testimonials, bandwagon appeal) used in media messages; and

(D) analyze various digital media venues for levels of formality and informality.

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

(ii) figurative language (e.g., similes, metaphors); and

(iii) graphic elements (e.g., capital letters, line length).

(16) Writing. Students write about their own experiences. Students are expected to write a personal narrative that has a clearly

defined focus and communicates the importance of or reasons for actions and/or consequences.

(17) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create multi-paragraph essays to convey information about a topic that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write informal letters that convey ideas, include important information, demonstrate a sense of closure, and use appropriate conventions (e.g., date, salutation, closing);

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding; and

(D) produce a multimedia presentation involving text and graphics using available technology.

(18) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(19) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (irregular verbs and active and passive voice);

(ii) non-count nouns (e.g., rice, paper);

(iii) predicate adjectives (She is *intelligent*.) and their comparative and superlative forms (e.g., many, more, most);

(iv) conjunctive adverbs (e.g., consequently, furthermore, indeed);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) indefinite pronouns (e.g., all, both, nothing, anything);

(vii) subordinating conjunctions (e.g., while, because, although, if); and

(viii) transitional words and phrases that demonstrate an understanding of the function of the transition related to the organization of the writing (e.g., on the contrary, in addition to);

(B) differentiate between the active and passive voice and know how to use them both; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(20) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use capitalization for:

- (i) abbreviations;
- (ii) initials and acronyms; and
- (iii) organizations;

(B) recognize and use punctuation marks including:

- (i) commas in compound sentences;
- (ii) proper punctuation and spacing for quotations;

and

(iii) parentheses, brackets, and ellipses (to indicate omissions and interruptions or incomplete statements); and

(C) use proper mechanics including italics and underlining for titles of books.

(21) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) differentiate between commonly confused terms (e.g., its, it's; affect, effect);

(B) use spelling patterns and rules and print and electronic resources to determine and check correct spellings; and

(C) know how to use the spell-check function in word processing while understanding its limitations.

(22) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering relevant information about the major research question.

(23) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect data from a range of print and electronic resources (e.g., reference texts, periodicals, web pages, online sources) and data from experts;

(B) differentiate between primary and secondary sources;

(C) record data, utilizing available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(24) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) refine the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance and reliability of sources for the research.

(25) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(26) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose and perspective;

(B) follow and give oral instructions that include multiple action steps; and

(C) paraphrase the major ideas and supporting evidence in formal and informal presentations.

(27) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give an organized presentation with a specific point of view, employing eye contact, speaking rate, volume, enunciation, natural gestures, and conventions of language to communicate ideas effectively.

(28) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate in student-led discussions by eliciting and considering suggestions from other group members and by identifying points of agreement and disagreement.

*§110.19. English Language Arts and Reading, Grade 7, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written con-

ventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In seventh grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 7 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (within a sentence and in larger sections of text) to determine or clarify the meaning of unfamiliar or ambiguous words;

(C) complete analogies that describe part to whole or whole to part;

(D) identify the meaning of foreign words commonly used in written English with emphasis on Latin and Greek words (e.g., *habeus corpus*, *e pluribus unum*, *bona fide*, *nemesis*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) describe multiple themes in a work of fiction;

(B) describe conventions in myths and epic tales (e.g., extended simile, the quest, the hero's tasks, circle stories); and

(C) analyze how place and time influence the theme or message of a literary work.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the importance of graphical elements (e.g., capital letters, line length, word position) on the meaning of a poem.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain a playwright's use of dialogue and stage directions.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) explain the influence of the setting on plot development;

(B) analyze the development of the plot through the internal and external responses of the characters, including their motivations and conflicts; and

(C) analyze different forms of point of view, including first-person, third-person omniscient, and third-person limited.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to describe the structural and substantive differences between an autobiography or a diary and a fictional adaptation of it.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to determine the figurative meaning of phrases and analyze how an author's use of language creates imagery, appeals to the senses, and suggests mood.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the difference between the theme of a literary work and the author's purpose in an expository text.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) evaluate a summary of the original text for accuracy of the main ideas, supporting details, and overall meaning;

(B) distinguish factual claims from commonplace assertions and opinions;

(C) use different organizational patterns as guides for summarizing and forming an overview of different kinds of expository text; and

(D) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres, and support those findings with textual evidence.

(11) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) analyze the structure of the central argument in contemporary policy speeches (e.g., argument by cause and effect, analogy, authority) and identify the different types of evidence used to support the argument; and

(B) identify such rhetorical fallacies as ad hominem, exaggeration, stereotyping, or categorical claims in persuasive texts.

(12) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow multi-dimensional instructions from text to complete a task, solve a problem, or perform procedures; and

(B) explain the function of the graphical components of a text.

(13) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) interpret both explicit and implicit messages in various forms of media;

(B) interpret how visual and sound techniques (e.g., special effects, camera angles, lighting, music) influence the message;

(C) evaluate various ways media influences and informs audiences; and

(D) assess the correct level of formality and tone for successful participation in various digital media.

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to ensure precise word choice and vivid images; consistent point of view; use of simple, compound, and complex sentences; internal and external coherence; and the use of effective transitions after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write an imaginative story that:

(i) sustains reader interest;

(ii) includes well-paced action and an engaging story line;

(iii) creates a specific, believable setting through the use of sensory details;

(iv) develops interesting characters; and

(v) uses a range of literary strategies and devices to enhance the style and tone; and

(B) write a poem using:

(i) poetic techniques (e.g., rhyme scheme, meter);

(ii) figurative language (e.g., personification, idioms, hyperbole); and

(iii) graphic elements (e.g., word position).

(16) Writing. Students write about their own experiences. Students are expected to write a personal narrative that has a clearly defined focus and communicates the importance of or reasons for actions and/or consequences.

(17) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write a multi-paragraph essay to convey information about a topic that:

(i) presents effective introductions and concluding paragraphs;

(ii) contains a clearly stated purpose or controlling idea;

(iii) is logically organized with appropriate facts and details and includes no extraneous information or inconsistencies;

(iv) accurately synthesizes ideas from several sources; and

(v) uses a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(B) write a letter that reflects an opinion, registers a complaint, or requests information in a business or friendly context;

(C) write responses to literary or expository texts that demonstrate the writing skills for multi-paragraph essays and provide sustained evidence from the text using quotations when appropriate; and

(D) produce a multimedia presentation involving text and graphics using available technology.

(18) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write a persuasive essay to the appropriate audience that:

(A) establishes a clear thesis or position;

(B) considers and responds to the views of others and anticipates and answers reader concerns and counter-arguments; and

(C) includes evidence that is logically organized to support the author's viewpoint and that differentiates between fact and opinion.

(19) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) identify, use, and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (perfect and progressive tenses) and participles;

(ii) appositive phrases;

(iii) adverbial and adjectival phrases and clauses;

(iv) conjunctive adverbs (e.g., consequently, furthermore, indeed);

(v) prepositions and prepositional phrases and their influence on subject-verb agreement;

(vi) relative pronouns (e.g., whose, that, which);

(vii) subordinating conjunctions (e.g., because, since); and

(viii) transitions for sentence to sentence or paragraph to paragraph coherence;

(B) write complex sentences and differentiate between main versus subordinate clauses; and

(C) use a variety of complete sentences (e.g., simple, compound, complex) that include properly placed modifiers, correctly identified antecedents, parallel structures, and consistent tenses.

(20) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate

capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use conventions of capitalization; and

(B) recognize and use punctuation marks including:

(i) commas after introductory words, phrases, and clauses; and

(ii) semicolons, colons, and hyphens.

(21) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(22) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) apply steps for obtaining and evaluating information from a wide variety of sources and create a written plan after preliminary research in reference works and additional text searches.

(23) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to gather information from a range of relevant print and electronic sources using advanced search strategies;

(B) categorize information thematically in order to see the larger constructs inherent in the information;

(C) record bibliographic information (e.g., author, title, page number) for all notes and sources according to a standard format; and

(D) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(24) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) narrow or broaden the major research question, if necessary, based on further research and investigation; and

(B) utilize elements that demonstrate the reliability and validity of the sources used (e.g., publication date, coverage, language, point of view) and explain why one source is more useful than another.

(25) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) draws conclusions and summarizes or paraphrases the findings in a systematic way;

(B) marshals evidence to explain the topic and gives relevant reasons for conclusions;

(C) presents the findings in a meaningful format; and

(D) follows accepted formats for integrating quotations and citations into the written text to maintain a flow of ideas.

(26) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's purpose by explaining the content, evaluating the delivery of the presentation, and asking questions or making comments about the evidence that supports a speaker's claims;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, or solve problems; and

(C) draw conclusions about the speaker's message by considering verbal communication (e.g., word choice, tone) and non-verbal cues (e.g., posture, gestures, facial expressions).

(27) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to present a critique of a literary work, film, or dramatic production, employing eye contact, speaking rate, volume, enunciation, a variety of natural gestures, and conventions of language to communicate ideas effectively.

(28) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in discussions, plan agendas with clear goals and deadlines, set time limits for speakers, take notes, and vote on key issues.

*§110.20. English Language Arts and Reading, Grade 8, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In eighth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling,

and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 8 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (within a sentence and in larger sections of text) to determine or clarify the meaning of unfamiliar or ambiguous words or words with novel meanings;

(C) complete analogies that describe a function or its description (e.g., pen:paper as chalk: \_\_\_\_\_ or soft:kitten as hard: \_\_\_\_\_);

(D) identify common words or word parts from other languages that are used in written English (e.g., phenomenon, charisma, chorus, passé, flora, fauna); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(3) Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) analyze literary works that share similar themes across cultures;

(B) compare and contrast the similarities and differences in mythologies from various cultures (e.g., ideas of afterlife, roles and characteristics of deities, purposes of myths); and

(C) explain how the values and beliefs of particular characters are affected by the historical and cultural setting of the literary work.

(4) Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to compare and contrast the relationship between the purpose and characteristics of different poetic forms (e.g., epic poetry, lyric poetry).

(5) Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze how different playwrights characterize their protagonists and antagonists through the dialogue and staging of their plays.

(6) Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze linear plot developments (e.g., conflict, rising action, falling action, resolution, subplots) to determine whether and how conflicts are resolved;

(B) analyze how the central characters' qualities influence the theme of a fictional work and resolution of the central conflict; and

(C) analyze different forms of point of view, including limited versus omniscient, subjective versus objective.

(7) Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to analyze passages in well-known speeches for the author's use of literary devices and word and phrase choice (e.g., aphorisms, epigraphs) to appeal to the audience.

(8) Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain the effect of similes and extended metaphors in literary text.

(9) Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Stu-

dents are expected to analyze works written on the same topic and compare how the authors achieved similar or different purposes.

(10) Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas, supporting details, and relationships among ideas in text succinctly in ways that maintain meaning and logical order;

(B) distinguish factual claims from commonplace assertions and opinions and evaluate inferences from their logic in text;

(C) make subtle inferences and draw complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres and support those findings with textual evidence.

(11) Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) compare and contrast persuasive texts that reached different conclusions about the same issue and explain how the authors reached their conclusions through analyzing the evidence each presents; and

(B) analyze the use of such rhetorical and logical fallacies as loaded terms, caricatures, leading questions, false assumptions, and incorrect premises in persuasive texts.

(12) Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) analyze text for missing or extraneous information in multi-step directions or legends for diagrams; and

(B) evaluate graphics for their clarity in communicating meaning or achieving a specific purpose.

(13) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) evaluate the role of media in focusing attention on events and informing opinion on issues;

(B) interpret how visual and sound techniques (e.g., special effects, camera angles, lighting, music) influence the message;

(C) evaluate various techniques used to create a point of view in media and the impact on audience; and

(D) assess the correct level of formality and tone for successful participation in various digital media.

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;



(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to ensure precise word choice and vivid images; consistent point of view; use of simple, compound, and complex sentences; internal and external coherence; and the use of effective transitions after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write an imaginative story that:

(i) sustains reader interest;

(ii) includes well-paced action and an engaging story line;

(iii) creates a specific, believable setting through the use of sensory details;

(iv) develops interesting characters; and

(v) uses a range of literary strategies and devices to enhance the style and tone; and

(B) write a poem using:

(i) poetic techniques (e.g., rhyme scheme, meter);

(ii) figurative language (e.g., personification, idioms, hyperbole); and

(iii) graphic elements (e.g., word position).

(16) Writing. Students write about their own experiences. Students are expected to write a personal narrative that has a clearly defined focus and includes reflections on decisions, actions, and/or consequences.

(17) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write a multi-paragraph essay to convey information about a topic that:

(i) presents effective introductions and concluding paragraphs;

(ii) contains a clearly stated purpose or controlling idea;

(iii) is logically organized with appropriate facts and details and includes no extraneous information or inconsistencies;

(iv) accurately synthesizes ideas from several sources; and

(v) uses a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(B) write a letter that reflects an opinion, registers a complaint, or requests information in a business or friendly context;

(C) write responses to literary or expository texts that demonstrate the use of writing skills for a multi-paragraph essay and provide sustained evidence from the text using quotations when appropriate; and

(D) produce a multimedia presentation involving text, graphics, images, and sound using available technology.

(18) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write a persuasive essay to the appropriate audience that:

(A) establishes a clear thesis or position;

(B) considers and responds to the views of others and anticipates and answers reader concerns and counter-arguments; and

(C) includes evidence that is logically organized to support the author's viewpoint and that differentiates between fact and opinion.

(19) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (perfect and progressive tenses) and participles;

(ii) appositive phrases;

(iii) adverbial and adjectival phrases and clauses;

(iv) relative pronouns (e.g., whose, that, which); and

(v) subordinating conjunctions (e.g., because, since);

(B) write complex sentences and differentiate between main versus subordinate clauses; and

(C) use a variety of complete sentences (e.g., simple, compound, complex) that include properly placed modifiers, correctly identified antecedents, parallel structures, and consistent tenses.

(20) Writing/Conventions of Language/Handwriting. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks, including:

(i) commas after introductory structures and dependent adverbial clauses, and correct punctuation of complex sentences; and

(ii) semicolons, colons, hyphens, parentheses, brackets, and ellipses.

(21) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(22) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) apply steps for obtaining and evaluating information from a wide variety of sources and create a written plan after preliminary research in reference works and additional text searches.

(23) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to gather information from a range of relevant print and electronic sources using advanced search strategies;

(B) categorize information thematically in order to see the larger constructs inherent in the information;

(C) record bibliographic information (e.g., author, title, page number) for all notes and sources according to a standard format; and

(D) differentiate between paraphrasing and plagiarism and identify the importance of using valid and reliable sources.

(24) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) narrow or broaden the major research question, if necessary, based on further research and investigation; and

(B) utilize elements that demonstrate the reliability and validity of the sources used (e.g., publication date, coverage, language, point of view) and explain why one source is more useful and relevant than another.

(25) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) draws conclusions and summarizes or paraphrases the findings in a systematic way;

(B) marshals evidence to explain the topic and gives relevant reasons for conclusions;

(C) presents the findings in a meaningful format; and

(D) follows accepted formats for integrating quotations and citations into the written text to maintain a flow of ideas.

(26) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's purpose by explaining the content, evaluating the delivery of the presentation, and asking questions or making comments about the evidence that supports a speaker's claims;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, or solve problems; and

(C) summarize formal and informal presentations, distinguish between facts and opinions, and determine the effectiveness of rhetorical devices.

(27) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students

will continue to apply earlier standards with greater complexity. Students are expected to advocate a position using anecdotes, analogies, and/or illustrations, and use eye contact, speaking rate, volume, enunciation, a variety of natural gestures, and conventions of language to communicate ideas effectively.

(28) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in discussions, plan agendas with clear goals and deadlines, set time limits for speakers, take notes, and vote on key issues.

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

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## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§110.30 - 110.34, 110.41

The new sections and amendment are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§110.30. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, High School, Beginning with School Year 2009-2010.*

(a) The provisions of §§110.31 - 110.34 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year and at that time shall supersede §§110.42 - 110.45 of this subchapter.

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §110.30(b)

§110.31. *English Language Arts and Reading, English I (One Credit), Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety

of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English I, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English I as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help

them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to distinguish between the denotative and connotative meanings of words;

(C) produce analogies that describe a function of an object or its description;

(D) describe the origins and meanings of foreign words or phrases used frequently in written English (e.g., *caveat emptor*, *carte blanche*, *tete a tete*, *pas de deux*, *bon appetit*, *quid pro quo*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) analyze how the genre of texts with similar themes shapes meaning;

(B) analyze the influence of mythic, classical and traditional literature on 20th and 21st century literature; and

(C) relate the figurative language of a literary work to its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the effects of diction and imagery (e.g., controlling images, figurative language, understatement, overstatement, irony, paradox) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain how dramatic conventions (e.g., monologues, soliloquies, dramatic irony) enhance dramatic text.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze non-linear plot development (e.g., flashbacks, foreshadowing, sub-plots, parallel plot structures) and compare it to linear plot development;

(B) analyze how authors develop complex yet believable characters in works of fiction through a range of literary devices, including character foils;

(C) analyze the way in which a work of fiction is shaped by the narrator's point of view; and

(D) demonstrate familiarity with works by authors from non-English-speaking literary traditions with emphasis on classical literature.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to analyze how literary essays interweave personal examples and ideas with factual information to explain, present a perspective, or describe a situation or event.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain the role of irony, sarcasm, and paradox in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the controlling idea and specific purpose of an expository text and distinguish the most important from the less important details that support the author's purpose.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize text and distinguish between a summary that captures the main ideas and elements of a text and a critique that takes a position and expresses an opinion;

(B) differentiate between opinions that are substantiated and unsubstantiated in the text;

(C) make subtle inferences and draw complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas and details in several texts selected to reflect a range of viewpoints on the same topic and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) analyze the relevance, quality, and credibility of evidence given to support or oppose an argument for a specific audience; and

(B) analyze famous speeches for the rhetorical structures and devices used to convince the reader of the authors' propositions.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) analyze the clarity of the objective(s) of procedural text (e.g., consider reading instructions for software, warranties, consumer publications); and

(B) analyze factual, quantitative, or technical data presented in multiple graphical sources.

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) compare and contrast how events are presented and information is communicated by visual images (e.g., graphic art, illustrations, news photographs) versus non-visual texts;

(B) analyze how messages in media are conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music);

(C) compare and contrast coverage of the same event in various media (e.g., newspapers, television, documentaries, blogs, Internet); and

(D) evaluate changes in formality and tone within the same medium for specific audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and the rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling;

and  
(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, and a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices, and transitions between paragraphs;

(iii) a controlling idea or thesis;

(iv) an organizing structure appropriate to purpose, audience, and context; and

(v) relevant information and valid inferences;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information; and

(ii) reader-friendly formatting techniques;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons supported by precise and relevant evidence;

(B) consideration of the whole range of information and views on the topic and accurate and honest representation of these views;

(C) counter-arguments based on evidence to anticipate and address objections;

(D) an organizing structure appropriate to the purpose, audience, and context; and

(E) an analysis of the relative value of specific data, facts, and ideas.

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) more complex active and passive tenses and verbals (gerunds, infinitives, participles);

(ii) restrictive and nonrestrictive relative clauses; and

(iii) reciprocal pronouns (e.g., each other, one another);

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities; and

(C) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) quotation marks to indicate sarcasm or irony;

(ii) comma placement in nonrestrictive phrases, clauses, and contrasting expressions; and

(iii) dashes to emphasize parenthetical information.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number).

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for the audience that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, solve problems, and complete processes; and

(C) evaluate the effectiveness of a speaker's main and supporting ideas.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give presentations using informal, formal, and technical language effectively to meet the needs of audience, purpose, and occasion, employing eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

§110.32. *English Language Arts and Reading, English II (One Credit), Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English II, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English II as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to distinguish between the denotative and connotative meanings of words;

(C) infer word meaning through the identification and analysis of analogies and other word relationships;

(D) show the relationship between the origins and meaning of foreign words or phrases used frequently in written English and historical events or developments (e.g., *glasnost*, *avant-garde*, *coup d'état*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast differences in similar themes expressed in different time periods;

(B) analyze archetypes (e.g., journey of a hero, tragic flaw) in mythic, traditional and classical literature; and

(C) relate the figurative language of a literary work to its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the structure or prosody (e.g., meter, rhyme scheme) and graphic elements (e.g., line length, punctuation, word position) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze how archetypes and motifs in drama affect the plot of plays.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze isolated scenes and their contribution to the success of the plot as a whole in a variety of works of fiction;

(B) analyze differences in the characters' moral dilemmas in works of fiction across different countries or cultures;

(C) evaluate the connection between forms of narration (e.g., unreliable, omniscient) and tone in works of fiction; and

(D) demonstrate familiarity with works by authors from non-English-speaking literary traditions with emphasis on 20th century world literature.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to evaluate the role of syntax and diction and the effect of voice, tone, and imagery on a speech, literary essay, or other forms of literary nonfiction.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Stu-

dents are expected to explain the function of symbolism, allegory, and allusions in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to analyze the controlling idea and specific purpose of a passage and the textual elements that support and elaborate it, including both the most important details and the less important details.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize text and distinguish between a summary and a critique and identify non-essential information in a summary and unsubstantiated opinions in a critique;

(B) distinguish among different kinds of evidence (e.g., logical, empirical, anecdotal) used to support conclusions and arguments in texts;

(C) make and defend subtle inferences and complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas and details in several texts selected to reflect a range of viewpoints on the same topic and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) explain shifts in perspective in arguments about the same topic and evaluate the accuracy of the evidence used to support the different viewpoints within those arguments; and

(B) analyze contemporary political debates for such rhetorical and logical fallacies as appeals to commonly held opinions, false dilemmas, appeals to pity, and personal attacks.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) evaluate text for the clarity of its graphics and its visual appeal; and

(B) synthesize information from multiple graphical sources to draw conclusions about the ideas presented (e.g., maps, charts, schematics).

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) evaluate how messages presented in media reflect social and cultural views in ways different from traditional texts;

(B) analyze how messages in media are conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music);

(C) examine how individual perception or bias in coverage of the same event influences the audience; and

(D) evaluate changes in formality and tone within the same medium for specific audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices, and transitions between paragraphs;

(iii) a thesis or controlling idea;

(iv) an organizing structure appropriate to purpose, audience, and context;

(v) relevant evidence and well-chosen details; and

(vi) distinctions about the relative value of specific data, facts, and ideas that support the thesis statement;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information;

(ii) reader-friendly formatting techniques; and

(iii) anticipation of readers' questions;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic and rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons supported by precise and relevant evidence;

(B) consideration of the whole range of information and views on the topic and accurate and honest representation of these views (i.e., in the author's own words and not out of context);

(C) counter-arguments based on evidence to anticipate and address objections;

(D) an organizing structure appropriate to the purpose, audience, and context;

(E) an analysis of the relative value of specific data, facts, and ideas; and

(F) a range of appropriate appeals (e.g., descriptions, anecdotes, case studies, analogies, illustrations).

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) more complex active and passive tenses and verbals (gerunds, infinitives, participles);

(ii) restrictive and nonrestrictive relative clauses; and

(iii) reciprocal pronouns (e.g., each other, one another);

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities; and

(C) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use conventions of capitalization; and



(B) use correct punctuation marks including:

(i) comma placement in nonrestrictive phrases, clauses, and contrasting expressions;

(ii) quotation marks to indicate sarcasm or irony; and

(iii) dashes to emphasize parenthetical information.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number).

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for the audience that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, solve problems, and complete processes; and

(C) evaluate how the style and structure of a speech support or undermine its purpose or meaning.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to advance a coherent argument that incorporates a clear thesis and a logical progression of valid evidence from reliable sources and that employs eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

§110.33. *English Language Arts and Reading, English III (One Credit), Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English III, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension

skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English III as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to draw conclusions about the nuance in word meanings;

(C) infer word meaning through the identification and analysis of analogies and other word relationships;

(D) recognize and use knowledge of cognates in different languages and of word origins to determine the meaning of words; and

(E) use general and specialized dictionaries, thesauri, glossaries, histories of language, books of quotations, and other related references (printed or electronic) as needed.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) analyze the way in which the theme or meaning of a selection represents a view or comment on the human condition;

(B) relate the characters and text structures of mythic, traditional, and classical literature to 20th and 21st century American novels, plays, or films; and

(C) relate the main ideas found in a literary work to primary source documents from its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the effects of metrics, rhyme schemes (e.g., end, internal, slant, eye), and other conventions in American poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze the themes and characteristics in different periods of modern American drama.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) evaluate how different literary elements (e.g., figurative language, point of view) shape the author's portrayal of the plot and setting in works of fiction;

(B) analyze the internal and external development of characters through a range of literary devices;

(C) analyze the impact of narration when the narrator's point of view shifts from one character to another; and

(D) demonstrate familiarity with works by authors in American fiction from each major literary period.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to analyze how rhetorical techniques (e.g., repetition, parallel structure, understatement, overstatement) in literary essays, true life adventures, and historically important speeches influence the reader, evoke emotions, and create meaning.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to analyze the meaning of classical, mythological, and biblical allusions in words, phrases, passages, and literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to analyze how the style, tone, and diction of a text advance the author's purpose and perspective or stance.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize a text in a manner that captures the author's viewpoint, its main ideas, and its elements without taking a position or expressing an opinion;

(B) distinguish between inductive and deductive reasoning and analyze the elements of deductively and inductively reasoned texts and the different ways conclusions are supported;

(C) make and defend subtle inferences and complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize ideas and make logical connections (e.g., thematic links, author analyses) between and among multiple texts representing similar or different genres and technical sources and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) evaluate how the author's purpose and stated or perceived audience affect the tone of persuasive texts; and

(B) analyze historical and contemporary political debates for such logical fallacies as non-sequiturs, circular logic, and hasty generalizations.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) evaluate the logic of the sequence of information presented in text (e.g., product support material, contracts); and

(B) translate (from text to graphic or from graphic to text) complex, factual, quantitative, or technical information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) evaluate how messages presented in media reflect social and cultural views in ways different from traditional texts;

(B) evaluate the interactions of different techniques (e.g., layout, pictures, typeface in print media, images, text, sound in electronic journalism) used in multi-layered media;

(C) evaluate the objectivity of coverage of the same event in various types of media; and

(D) evaluate changes in formality and tone across various media for different audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and rhetorical devices to convey meaning;

(C) revise drafts to clarify meaning and achieve specific rhetorical purposes, consistency of tone, and logical organization by rearranging the words, sentences, and paragraphs to employ tropes (e.g., metaphors, similes, analogies, hyperbole, understatement, rhetorical questions, irony), schemes (e.g., parallelism, antithesis, inverted word order, repetition, reversed structures), and by adding transitional words and phrases;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, complex and non-stereotypical characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem that reflects an awareness of poetic conventions and traditions within different forms (e.g., sonnets, ballads, free verse); and

(C) write a script with an explicit or implicit theme, using a variety of literary techniques.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices, and transitions between paragraphs;

(iii) a clear thesis statement or controlling idea;

(iv) a clear organizational schema for conveying ideas;

(v) relevant and substantial evidence and well-chosen details; and

(vi) information on multiple relevant perspectives and a consideration of the validity, reliability, and relevance of primary and secondary sources;

(B) write procedural or work-related documents (e.g., résumés, proposals, college applications, operation manuals) that include:

(i) a clearly stated purpose combined with a well-supported viewpoint on the topic;

(ii) appropriate formatting structures (e.g., headings, graphics, white space);

(iii) relevant questions that engage readers and consider their needs;

(iv) accurate technical information in accessible language; and

(v) appropriate organizational structures supported by facts and details (documented if appropriate);

(C) write an interpretation of an expository or a literary text that:

(i) advances a clear thesis statement;

(ii) addresses the writing skills for an analytical essay, including references to and commentary on quotations from the text;

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices;

(iv) identifies and analyzes the ambiguities, nuances, and complexities within the text; and

(v) anticipates and responds to readers' questions or contradictory information; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that appeals to a specific audience and synthesizes information from multiple points of view.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay (e.g., evaluative essays, proposals) to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons supported by precise and relevant evidence, including facts, expert opinions, quotations, and/or expressions of commonly accepted beliefs;

(B) accurate and honest representation of divergent views (i.e., in the author's own words and not out of context);

(C) an organizing structure appropriate to the purpose, audience, and context;

(D) information on the complete range of relevant perspectives;

(E) demonstrated consideration of the validity and reliability of all primary and secondary sources used; and

(F) language attentively crafted to move a disinterested or opposed audience, using specific rhetorical devices to back up assertions (e.g., appeals to logic, emotions, ethical beliefs).

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of different types of clauses and phrases (e.g., adjectival, noun, adverbial clauses and phrases); and

(B) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to correctly and consistently use conventions of punctuation and capitalization.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in in-depth research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to gather evidence from experts on the topic and texts written for informed audiences in the field, distinguishing between reliable and unreliable sources and avoiding over-reliance on one source;

(B) systematically organize relevant and accurate information to support central ideas, concepts, and themes, outline ideas into conceptual maps/timelines, and separate factual data from complex inferences; and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number), differentiating among primary, secondary, and other sources.

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) differentiate between theories and the evidence that supports them and determine whether the evidence found is weak or strong and how that evidence helps create a cogent argument; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into an extended written or oral presentation that:

(A) provides an analysis that supports and develops personal opinions, as opposed to simply restating existing information;

(B) uses a variety of formats and rhetorical strategies to argue for the thesis;

(C) develops an argument that incorporates the complexities of and discrepancies in information from multiple sources and perspectives while anticipating and refuting counter-arguments;

(D) uses a style manual (e.g., *Modern Language Association*, *Chicago Manual of Style*) to document sources and format written materials; and

(E) is of sufficient length and complexity to address the topic.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and in-

formal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by framing inquiries that reflect an understanding of the content and by identifying the positions taken and the evidence in support of those positions; and

(B) evaluate the clarity and coherence of a speaker's message and critique the impact of a speaker's diction and syntax on an audience.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give a formal presentation that exhibits a logical structure, smooth transitions, accurate evidence, well-chosen details, and rhetorical devices, and that employs eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, offering ideas or judgments that are purposeful in moving the team towards goals, asking relevant and insightful questions, tolerating a range of positions and ambiguity in decision-making, and evaluating the work of the group based on agreed-upon criteria.

§110.34. *English Language Arts and Reading, English IV (One Credit), Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English IV, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(A) English language learners (ELLs) are acquiring English, learning content in English, and learning to read simultaneously. For this reason, it is imperative that reading instruction should be comprehensive and that students receive instruction in phonemic awareness, phonics, decoding, and word attack skills while simultaneously being taught academic vocabulary and comprehension skills and strategies. Reading instruction that enhances ELL's ability to decode unfamiliar words and to make sense of those words in context will expedite their ability to make sense of what they read and learn from reading. Additionally, developing fluency, spelling, and grammatical conventions of academic language must be done in meaningful contexts and not in isolation.

(B) For ELLs, comprehension of texts requires additional scaffolds to support comprehensible input. ELL students should use the knowledge of their first language (e.g., cognates) to further vocabulary development. Vocabulary needs to be taught in the context of connected discourse so that language is meaningful. ELLs must learn how rhetorical devices in English differ from those in their native language. At the same time English learners are learning in English, the focus is on academic English, concepts, and the language structures specific to the content.

(C) During initial stages of English development, ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. However, English language learners' abilities to meet these standards will be influenced by their proficiency in English. While English language learners can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. It is also critical to understand that ELLs with no previous or with interrupted schooling will require explicit and strategic support as they acquire English and learn to learn in English simultaneously.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English IV as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to draw conclusions about the nuance in word meanings;

(C) use the relationship between words encountered in analogies to determine their meanings (e.g., synonyms/antonyms, connotation/denotation);

(D) analyze and explain how the English language has developed and been influenced by other languages; and

(E) use general and specialized dictionaries, thesauri, histories of language, books of quotations, and other related references (printed or electronic) as needed.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast works of literature that express a universal theme;

(B) compare and contrast the similarities and differences in classical plays with their modern day novel, play, or film versions; and

(C) relate the characters, setting, and theme of a literary work to the historical, social, and economic ideas of its time.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to evaluate the changes in sound, form, figurative language, graphics, and dramatic structure in poetry across literary time periods.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to evaluate how the structure and elements of drama change in the works of British dramatists across literary periods.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze how complex plot structures (e.g., subplots) and devices (e.g., foreshadowing, flashbacks, suspense) function and advance the action in a work of fiction;

(B) analyze the moral dilemmas and quandaries presented in works of fiction as revealed by the underlying motivations and behaviors of the characters;

(C) compare and contrast the effects of different forms of narration across various genres of fiction; and

(D) demonstrate familiarity with works of fiction by British authors from each major literary period.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to analyze the effect of ambiguity, contradiction, subtlety, paradox, irony, sarcasm, and overstatement in literary essays, speeches, and other forms of literary nonfiction.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to analyze how the author's patterns of imagery, literary allusions, and conceits reveal theme, set tone, and create meaning in metaphors, passages, and literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to analyze the consistency and clarity of the expression of the controlling idea and the ways in which the organizational and rhetorical patterns of text support or confound the author's meaning or purpose.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions

about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize a text in a manner that captures the author's viewpoint, its main ideas, and its elements without taking a position or expressing an opinion;

(B) explain how authors writing on the same issue reached different conclusions because of differences in assumptions, evidence, reasoning, and viewpoints;

(C) make and defend subtle inferences and complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize ideas and make logical connections (e.g., thematic links, author analysis) among multiple texts representing similar or different genres and technical sources and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) evaluate the merits of an argument, action, or policy by analyzing the relationships (e.g., implication, necessity, sufficiency) among evidence, inferences, assumptions, and claims in text; and

(B) draw conclusions about the credibility of persuasive text by examining its implicit and stated assumptions about an issue as conveyed by the specific use of language.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) draw conclusions about how the patterns of organization and hierarchic structures support the understandability of text; and

(B) evaluate the structures of text (e.g., format, headers) for their clarity and organizational coherence and for the effectiveness of their graphic representations.

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) evaluate how messages presented in media reflect social and cultural views in ways different from traditional texts;

(B) evaluate the interactions of different techniques (e.g., layout, pictures, typeface in print media, images, text, sound in electronic journalism) used in multi-layered media;

(C) evaluate how one issue or event is represented across various media to understand the notions of bias, audience, and purpose; and

(D) evaluate changes in formality and tone across various media for different audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, back-

ground reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and the rhetorical devices to convey meaning;

(C) revise drafts to clarify meaning and achieve specific rhetorical purposes, consistency of tone, and logical organization by rearranging the words, sentences, and paragraphs to employ tropes (e.g., metaphors, similes, analogies, hyperbole, understatement, rhetorical questions, irony), schemes (e.g., parallelism, antithesis, inverted word order, repetition, reversed structures), and by adding transitional words and phrases;

(D) edit drafts for grammar, mechanics, and spelling;

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, a clear theme, complex and non-stereotypical characters, a range of literary strategies (e.g., dialogue, suspense), devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem that reflects an awareness of poetic conventions and traditions within different forms (e.g., sonnets, ballads, free verse); and

(C) write a script with an explicit or implicit theme, using a variety of literary techniques.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices, and transitions between paragraphs;

(iii) a clear thesis statement or controlling idea;

(iv) a clear organizational schema for conveying ideas;

(v) relevant and substantial evidence and well-chosen details;

(vi) information on all relevant perspectives and consideration of the validity, reliability, and relevance of primary and secondary sources; and

(vii) an analysis of views and information that contradict the thesis statement and the evidence presented for it;

(B) write procedural and work-related documents (e.g., résumés, proposals, college applications, operation manuals) that include:

(i) a clearly stated purpose combined with a well-supported viewpoint on the topic;

(ii) appropriate formatting structures (e.g., headings, graphics, white space);

(iii) relevant questions that engage readers and address their potential problems and misunderstandings;

(iv) accurate technical information in accessible language; and

(v) appropriate organizational structures supported by facts and details (documented if appropriate);

(C) write an interpretation of an expository or a literary text that:

(i) advances a clear thesis statement;

(ii) addresses the writing skills for an analytical essay including references to and commentary on quotations from the text;

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices;

(iv) identifies and analyzes ambiguities, nuances, and complexities within the text; and

(v) anticipates and responds to readers' questions and contradictory information; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that appeals to a specific audience and synthesizes information from multiple points of view.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay (e.g., evaluative essays, proposals) to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons with various forms of support (e.g., hard evidence, reason, common sense, cultural assumptions);

(B) accurate and honest representation of divergent views (i.e., in the author's own words and not out of context);

(C) an organizing structure appropriate to the purpose, audience, and context;

(D) information on the complete range of relevant perspectives;

(E) demonstrated consideration of the validity and reliability of all primary and secondary sources used;

(F) language attentively crafted to move a disinterested or opposed audience, using specific rhetorical devices to back up assertions (e.g., appeals to logic, emotions, ethical beliefs); and

(G) an awareness and anticipation of audience response that is reflected in different levels of formality, style, and tone.

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of different types of clauses and phrases (e.g., adjectival, noun, adverbial clauses and phrases); and

(B) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to correctly and consistently use conventions of punctuation and capitalization.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in in-depth research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to gather evidence from experts on the topic and texts written for informed audiences in the field, distinguishing between reliable and unreliable sources and avoiding over-reliance on one source;

(B) systematically organize relevant and accurate information to support central ideas, concepts, and themes, outline ideas into conceptual maps/timelines, and separate factual data from complex inferences; and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number), differentiating among primary, secondary, and other sources.

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) differentiate between theories and the evidence that supports them and determine whether the evidence found is weak or strong and how that evidence helps create a cogent argument; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into an extended written or oral presentation that:

(A) provides an analysis that supports and develops personal opinions, as opposed to simply restating existing information;

(B) uses a variety of formats and rhetorical strategies to argue for the thesis;

(C) develops an argument that incorporates the complexities of and discrepancies in information from multiple sources and perspectives while anticipating and refuting counter-arguments;

(D) uses a style manual (e.g., *Modern Language Association*, *Chicago Manual of Style*) to document sources and format written materials; and

(E) is of sufficient length and complexity to address the topic.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by framing inquiries that reflect an understanding of the content and by identifying the positions taken and the evidence in support of those positions; and

(B) assess the persuasiveness of a presentation based on content, diction, rhetorical strategies, and delivery.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to formulate sound arguments by using elements of classical speeches (e.g., introduction, first and second transitions, body, and conclusion), the art of persuasion, rhetorical devices, eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, offering ideas or judgments that are purposeful in moving the team towards goals, asking relevant and insightful questions, tolerating a range of positions and ambiguity in decision-making, and evaluating the work of the group based on agreed-upon criteria.

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 August 15, 2008.

TRD-200804408

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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Proposal publication date: April 18, 2008

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



## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §110.25, §110.26

The State Board of Education (SBOE) adopts amendments to §110.25 and §110.26, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading middle school elective courses. The amendments are adopted without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3155) and will not be republished. The sections establish the curriculum requirements for reading and speech elective courses at the middle school level. The adopted amendments incorporate refinements to these elective courses.



The amendments were recommended by educator review committees and feedback received from stakeholders through online surveys placed on the Texas Education Agency (TEA) website. The amendments to the middle school elective courses are necessary at this time because these elective courses are included in the currently-issued proclamation that calls for instructional materials to be used in classrooms beginning in 2010.

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

No comments were received on the proposal.

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks.

The amendments implement the Texas Education Code, §7.102(c)(4) and §28.002.

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

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## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 7. ADMINISTRATION

##### 22 TAC §7.10

The Texas Board of Architectural Examiners adopts an amendment to §7.10, pertaining to fees, with changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5217). All of the changes are in the graphic attached to the rule. Some of the coding that is used to denote new text and deleted text was inadvertently omitted. Specifically, in footnotes marked \*\* and \*\*\*, the new fees for 2008 and 2009 were provided but not marked as new text; the footnote marked \*\*\*\* included text which noted the fee for ARE Version 3.1 and provided the new fee for ARE Version 4.0. The heading for the first column of fees was incorrectly shown as "Architects Interior" and was corrected to "Architects" and the next-to-last item in the fee schedule, a fee for review of the landscape architecture examination, was not marked as being deleted. The deletion of this item was mentioned in the preamble but the coding to delete it was accidentally omitted.

The amended rule reduces fees for emeritus registration renewal. Since the penalty for late renewal is a percentage of the renewal fee, the amendment makes a corresponding reduction to the amount of the penalty. The amendment also modifies the late renewal period to which the penalty would apply in order to conform to legislative changes which extend the period during which an expired registration may be renewed. The amendment also includes the fee that will be charged by the examination provider for a new version of the architectural registration examination which became available in July 2008. The amendment clarifies that a fee paid by a check which is refused by the bank upon which the check is drawn due to insufficient funds, errors in routing, or errors in the bank account number will be considered unpaid and late penalties or other penalties will accrue upon the unpaid fee. The amendment also eliminates an obsolete fee for review of the landscape architectural registration examination. The purpose of the amendment is to make the fees for emeritus status less costly for retired registrants and more equitable for out-of-state emeritus registrants. The amendment also serves to reflect the current fees charged by the examination providers and provide notice that the fee paid by a check which is not honored by the bank is not considered paid. As adopted, emeritus fees charged by the board will be lower and the fee schedule will provide accurate notice of the fees charged under current law and the current examination fees charged by the examination providers.

As a result of this amendment, there will be a reduction in the cost to retirees to maintain emeritus registration status and clarification of notice to candidates regarding the fee charged by examination providers for the current registration examinations. The rule will also accurately reflect recent legislative changes that provide for the cancellation of an expired certificate of registration two years after it expires in lieu of one year after expiration. The rule will have no adverse impact on small or micro business. Since the rule will not adversely impact small business, the board is not required to prepare an economic impact statement or flexibility analysis and did not prepare one.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §§1051.202, 1051.353, 1051.651, 1051.357, 1052.054, 1052.155, 1053.052, and 1053.156 of the Texas Occupations Code Annotated and §14(a) of Article 8930, Texas Civil Statutes Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, set fees to cover the cost of administering its laws, impose penalties for late renewal of registration, and charge a fee for the registration and renewal as an emeritus registrant.

##### §7.10. General Fees.

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) Effective September 1, 2008, the following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law: Figure: 22 TAC §7.10(b)

(c) The Board cannot accept cash as payment for any fee.

(d) An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing, or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U.S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

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

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Texas Board of Architectural Examiners

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## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

#### SUBCHAPTER C. DISCIPLINARY GUIDELINES

##### 22 TAC §§281.62 - 281.65

The Texas State Board of Pharmacy adopts amendments to §281.62, concerning Aggravating and Mitigating Factors, §281.63, concerning Considerations for Criminal Offenses, §281.64, concerning Sanctions for Criminal Offenses, and §281.65, concerning Schedule of Administrative Penalties. The amendments are adopted without changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4785).

The amendments clarify disciplinary guidelines to reflect that the Board has given careful consideration to the guidelines and intends the guidelines to reflect the regulatory policies and goals of the Board to protect the public health and safety.

No comments were received regarding adoption of the amendments.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804414

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## CHAPTER 291. PHARMACIES

### SUBCHAPTER A. ALL CLASSES OF PHARMACIES

#### 22 TAC §291.15

The Texas State Board of Pharmacy adopts new §291.15, concerning Storage of Drugs. The new rule is adopted without changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4789).

The new rule provides the storage requirements for drugs in all classes of pharmacies.

No comments were received regarding adoption of the new rule.

The new rule is adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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Gay Dodson, R.Ph.

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For further information, please call: (512) 305-8028



### SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

#### 22 TAC §§291.31 - 291.34

The Texas State Board of Pharmacy adopts amendments to §291.31, concerning Definitions, §291.32, concerning Personnel, §291.33, concerning Operational Standards, and §291.34, concerning Records. The amendments to §§291.31, 291.33 and 291.34 are adopted with changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2462). The amendments to §291.32 are adopted without changes and will not be republished.

The changes to §291.31(3) updates the name from "Texas State Board of Nurse Examiners" to "Texas Board of Nursing". The changes amend §291.33 and §291.34 to allow pharmacies additional time to comply with the rules regarding documentation of patient counseling; and amend §291.33 to include other types of locking systems with regard to security of the pharmacy and to allow pharmacists to take short breaks from the pharmacy while on-site but not define a specific amount of time that the pharmacist may take a break.

The amendments incorporate recommendations made by the Task Force on Pharmacy Security in Community (Class A) Pharmacies; clarify the definition of the prescription department; clarify the responsibilities of the owner to include establishing policies and procedures for the security of the prescription department; outline the security requirements for Class A pharmacies; clarify the temporary absence requirements for pharmacists; require the pharmacy to document the identity of each pharmacist involved in a specific portion of the dispensing process if the pharmacy's data processing system is capable of recording such information; require the pharmacy to document the identity of the pharmacist responsible for providing verbal counseling on a new prescription; and implement S.B. 1658, passed by the 80th Texas Legislature, allowing pharmacists to dispense up to a 30-day supply of prescription drugs in the event of a manmade or natural disaster.

Comments were received as follows:

H.E.B. and the Texas Federation of Drug Stores (TFDS) commented in support of adoption of the amendments to §291.32 regarding the documentation of the identity of each pharmacist involved in a specific portion of the dispensing process if the pharmacy's data processing system is capable of recording such information. The Board agrees with these comments.

The Texas Pharmacy Association (TPA), National Association of Chain Drug Stores (NACDS), and American Pharmacies commented on the amendments to §291.33 regarding the security requirements. TPA suggested that pharmacies be allowed to not have a pharmacist on-site for up to a 2 hour period during a 24 hour day and allow pharmacy technicians to work in the pharmacist's absence. American Pharmacies opposed the amendments regarding the temporary absence provisions for a pharmacist to be off-site and on-site and recommended that there be no specific timeframes in the rules and the pharmacy technicians be allowed to work in the pharmacy in the pharmacist's absence. The Board disagrees with these comments because the Texas Pharmacy Act, Section 562.101(a) requires a pharmacy to be under the "continuous on-site supervision of a pharmacist." Therefore, a pharmacy may not be open for pharmacy services if a pharmacist is not on-site. NACDS commented in support of §291.33 recognizing that in order to expand the rules to allow pharmacy technicians and pharmacy technician trainees to work in the pharmacy when a pharmacist is off-site would require a change in statute. The Board agrees with this comment.

American Pharmacies commented that the rules regarding the security requirements for pharmacies that change location should be clarified to state that pharmacies that change ownership but do not change location are exempt from the provisions. The Board agrees with the comments and amended the rules as such.

NACDS commented that §291.33 should be amended to include other types of systems or technologies to secure the pharmacy from unauthorized entrance when the pharmacy is closed. NACDS also commented that the rule requires the pharmacist-in-charge to designate individuals who may access the pharmacy. NACDS recommends that in for emergency situations individuals should be allowed to be designated by title. The Board agrees with these comments and amended the rules as such.

H.E.B., NACDS, TPA, and TFDS commented on the requirements for documenting patient counseling. TPA commented that the rules should be withdrawn. The Board disagrees with this comment and believes that documentation of the pharmacist responsible for counseling is an important tool to ensure that patients are being counseled by the pharmacist. H.E.B., NACDS, and TFDS commented that pharmacies may need additional time to comply with the requirements. The Board agrees with these comments and amended the rules to allow pharmacies until June 1, 2010, to comply with the requirements. NACDS also requested that pharmacies be able to use other methods for documenting counseling. The Board agrees with this comment and amended the rules to allow other forms of documentation.

TFDS commented in support of §291.34 regarding the provisions for emergency dispensing of a 30 day supply of drugs in the event of a disaster. The Board agrees with this comment.

The amendments are adopted under §551.002 and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

#### *§291.31. Definitions.*

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

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapters 562 and 563 of the Texas Pharmacy Act.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) Advanced practice nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse on the basis of completion of an advanced education program. The term includes a nurse practitioner, a nurse midwife, a nurse anesthetist, and a clinical nurse specialist.

(4) Automated compounding or counting device--An automated device that compounds, measures, counts, and/or packages a specified quantity of dosage units of a designated drug product.

(5) Automated pharmacy dispensing systems--a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, dispensing, and distribution of medications, and which collects, controls, and maintains all transaction information. "Automated pharmacy dispensing systems" does not mean "Automated compounding or counting devices" or "Automated medication supply devices."

(6) Board--The Texas State Board of Pharmacy.

(7) Carrying out or signing a prescription drug order--The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas Medical Board by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

- (A) patient's name and address;
- (B) name, strength, and quantity of the drug to be dispensed;
- (C) directions for use;
- (D) the intended use of the drug, if appropriate;
- (E) the name, address, and telephone number of the physician;
- (F) the name, address, telephone number, identification number, and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant completing the prescription drug order;
- (G) the date; and
- (H) the number of refills permitted.

(8) Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(9) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(10) Dangerous drug--A drug or device that:

- (A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or
- (B) bears or is required to bear the legend:
  - (i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or
  - (ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(11) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(12) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(13) Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(14) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(15) Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(16) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(17) Downtime--Period of time during which a data processing system is not operable.

(18) Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

- (A) known allergies;
- (B) rational therapy-contraindications;
- (C) reasonable dose and route of administration;
- (D) reasonable directions for use;
- (E) duplication of therapy;
- (F) drug-drug interactions;
- (G) drug-food interactions;
- (H) drug-disease interactions;
- (I) adverse drug reactions; and
- (J) proper utilization, including overutilization or underutilization.

(19) Electronic prescription drug order--A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(20) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information

into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Hard copy--A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(23) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(24) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(25) Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(26) New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(27) Original prescription--The:

(A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(28) Part-time pharmacist--A pharmacist who works less than full-time.

(29) Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(30) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(31) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(32) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(33) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(34) Physician assistant--A physician assistant recognized by the Texas Medical Board as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas Medical Board.

(35) Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this subtitle;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under §§157.0511, 157.052, 157.053, 157.054, 157.0541, or 157.0542, Occupations Code.

(36) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(37) Prescription department--The area of a pharmacy that contains prescription drugs.

(38) Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(39) Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(40) Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(41) State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(42) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(43) Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

§291.33. *Operational Standards.*

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A (community) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) A Class A (community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(11) A Class A (Community) pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) Class A (Community) pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for

effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) Effective, June 1, 2009, the pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) Effective, June 1, 2009, at a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge for entry by another pharmacist.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short peri-

ods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the a pharmacist is off-site.

(iii) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) effective, June 1, 2010, shall be documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record on either the original hard-copy prescription. in the pharmacy's data processing system or in an electronic logbook; and

(v) shall be reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the consumer and printed in easily readable font size.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;



(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(iii) A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) Except as specified in subparagraph (B) of this paragraph, in the best interest of the public health and to optimize drug therapy, upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription. Either a pharmacist or other pharmacy personnel shall inform the patient or patient's agent that a pharmacist is available to discuss the patient's prescription and provide information.

(H) A pharmacy shall post a sign no smaller than 8.5 inches by 11 inches in clear public view at all locations in the pharmacy where a patient may pick up prescriptions. The sign shall contain the following statement in a font that is easily readable: "Do you have questions about your prescription? Ask the pharmacist." Such notification shall be in both English and Spanish.

(I) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered

"high risk" due to their age, medical condition, family history, or related concern.

(3) Generic Substitution.

(A) General requirements.

(i) In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug product if:

(I) the generic product costs the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subparagraph (C) of this paragraph.

(ii) If the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph, a pharmacist shall not substitute a generically equivalent drug product unless the pharmacist obtains verbal or written authorization from the practitioner and notes such authorization on the original prescription drug order.

(B) Prescription format for written prescription drug orders.

(i) A written prescription drug order issued in Texas may:

(I) be on a form containing a single signature line for the practitioner; and

(II) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(ii) A pharmacist may dispense a prescription that is not issued on the form specified in clause (i) of this subparagraph, however, the pharmacist may dispense a generically equivalent drug product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C)(i) of this paragraph.

(iii) The prescription format specified in clause (i) of this subparagraph does not apply to the following types of prescription drug orders:

(I) prescription drug orders issued by a practitioner in a state other than Texas;

(II) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(III) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(iv) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing directive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(C) Dispensing directive.

(i) Written prescriptions.

(I) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(II) The dispensing directive shall:

(-a-) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments; and

(-b-) comply with federal and state law, including rules, with regard to formatting and security requirements.

(III) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(IV) After, June 1, 2002, a practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(V) A written prescription drug order issued prior to June 1, 2002, but presented for dispensing on or after June 1, 2002, shall follow the substitution instructions on the prescription.

(ii) Verbal Prescriptions.

(I) If a prescription drug order is transmitted to a pharmacist orally, the practitioner or practitioner's agent shall prohibit substitution by specifying "brand necessary" or "brand medically necessary." The pharmacists shall note any substitution instructions by the practitioner or practitioner's agent, on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subparagraph (B)(i) of this paragraph, or any other format that clearly indicates the substitution instructions.

(II) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on a verbal prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(-a-) the practitioner or the practitioner's agent shall verbally indicate that the brand is medically necessary; and

(-b-) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in clause (i) of this subparagraph within 30 days.

(iii) Electronic prescription drug orders.

(I) To prohibit substitution, the practitioner or practitioner's agent shall note "brand necessary" or "brand medically necessary" on the electronic prescription drug order.

(II) If the practitioner or practitioner's agent does not clearly indicate on the electronic prescription drug order that the brand is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall fax a

copy of the original prescription drug order which complies with the requirements of a written prescription drug order specified in clause (i) of this subparagraph within 30 days.

(iv) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(I) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(-a-) prescription drug orders issued by a practitioner in a state other than Texas;

(-b-) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(-c-) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(II) A pharmacist may not substitute on prescription drug orders identified in subclause (I) of this clause unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(-a-) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(-b-) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(-1-) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-2-) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(-3-) Such documentation shall be updated yearly.

(D) Refills.

(i) Original substitution instructions. All refills, including prescriptions issued prior to June 1, 2001, shall follow the original substitution instructions or dispensing directive, unless otherwise indicated by the practitioner or practitioner's agent.

(ii) Narrow therapeutic index drugs.

(I) The board, in consultation with the Texas State Board of Medical Examiners, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.013, Occupations Code.

(-a-) The board has specified in §309.7 of this title (relating to dispensing responsibilities) that for drugs listed in the publication, pharmacists shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. Pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(-b-) Practitioners may prohibit substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph.

(II) The board shall reconsider the contents of the list if the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products.

(4) Substitution of dosage form.

(A) As specified in §562.002 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution;

(ii) the pharmacist notifies the practitioner of the dosage form substitution; and

(iii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product;

(III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be reused. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner;

(vii) instructions for use;

(viii) quantity dispensed;

(ix) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(x) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xi) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code; and

(xiii) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner.

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(B) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner and, if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; and

(II) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) typewriter or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

- (A) Texas Pharmacy Act and rules;
- (B) Texas Dangerous Drug Act and rules;
- (C) Texas Controlled Substances Act and rules; and
- (D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(2) at least one current or updated reference from each of the following categories:

(A) patient information:

(i) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(ii) a reference text or information leaflets which provide patient information;

(B) drug interactions: a reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(C) a general information reference text, such as:

(i) Facts and Comparisons with current supplements;

(ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(iii) Clinical Pharmacology;

(iv) American Hospital Formulary Service with current supplements; or

(v) Remington's Pharmaceutical Sciences; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined by the following terms:

(i) controlled room temperature--temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

(ii) cool--temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit) which may, alternatively, be stored in a refrigerator unless otherwise specified on the labeling;

(iii) refrigerate--temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

(iv) freeze--temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist;

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(A) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(B) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(C) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(D) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) expiration date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the packer; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Definition. A patient med-pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the date of preparation of the patient med-pak and the beyond-use date assigned to the patient med-pak (which such beyond-use date shall not be later than 60 days from the date of preparation);

(ix) the name, address, and telephone number of the pharmacy;

(x) the initials or an identification code of the dispensing pharmacist; and

(xi) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of each drug product dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner of each drug product and if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; and

(II) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(5) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(6) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(7) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems. This paragraph becomes effective September 1, 2000.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated pharmacy dispensing system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(III) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(IV) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(VI) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board, each patient of the pharmacy, and other appropriate agencies whenever an automated pharmacy dispensing system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(b)(2) of this title, a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(A) This final check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed the prescription and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in paragraph (2)(C)(i)(IV) of this subsection; and

(II) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated system until a completed, labeled prescription ready for delivery to the patient is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated pharmacy dispensing system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performs any other portion of the dispensing process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after dispensing but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) For the purpose of §291.32(b)(2) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the prescription has been dispensed safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:



(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

§291.34. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), contained in Community Pharmacy (Class A) shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Except as noted in clause (ii) of this subparagraph, written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(iii) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g. J.H. Smith or John H. Smith.

(iv) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(v) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-a-) the prescription is filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the

manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance;

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the seventh day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is a written, oral, or telephonically or electronically communicated prescription, as allowed by the DEA issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(i) A pharmacist may dispense a prescription drug order which is carried out or signed by an advanced practice nurse or physician assistant provided the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice

nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders. For the purpose of this subsection, prescription drug orders shall be considered the same as verbal prescription drug orders.

(A) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic prescription drug order for a:

(i) Schedule II controlled substance, except as authorized for faxed prescriptions in §481.074, Health and Safety Code; or

(ii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Original prescription drug order records.

(A) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(B) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(C) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III - V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(D) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (C) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(6) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(viii) date of issuance.

(B) All original electronic prescription drug orders shall bear:

(i) name of the patient, if such drug is for an animal, the species of such animal, and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) indications for use, unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to:);

(x) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(xi) telephone number of the prescribing practitioner;

(xii) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(xiii) if transmitted by a designated agent, the full name of the designated agent.

(C) All original written prescriptions carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(i) name and address of the patient;

(ii) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(iii) name, identification number, original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;

(v) name, strength, and quantity of the drug;

(vi) directions for use;

(vii) indications for use, if appropriate;

(viii) date of issuance; and

(ix) number of refills authorized.

(D) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard-copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance;

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a

drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563; and

(vii) effective June 1, 2010, for each new prescription the initials or identification code of the pharmacist responsible for providing counseling.

(7) Refills.

(A) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order.

(B) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(C) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(D) Refills of prescription drug orders for Schedules III - V controlled substances.

(i) Prescription drug orders for Schedules III - V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(E) If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(F) If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months which is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. Effective January 1, 2009, a patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, effective January 1, 2009, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, which indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(A) the transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis;

(B) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills;

(C) the transfer is communicated directly between pharmacists and/or pharmacist interns;

(D) both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill;

(E) the pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer;

(F) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(5) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraph (4) of this subsection.

(6) Effective January 1, 2009, each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A (community) pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of

drug usage for the preceding two years as specified in paragraph (2)(G) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in paragraph (2)(B) of this subsection. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Effective January 1, 2009, each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard-copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) effective January 1, 2009, initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) effective January 1, 2009, any changes made to a record of dispensing.

(D) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard-copy printout shall be available within 72 hours with a certification by the individual providing the printout, which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard-copy prescription drug order;

(B) on the daily hard-copy printout; or

(C) via the CRT display.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(A) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(B) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(C) The transfer is communicated directly between pharmacists and/or pharmacist interns orally by telephone or via facsimile or as authorized in paragraph (5) of this subsection. A transfer completed as authorized in paragraph (5) of this subsection may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(D) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(E) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer.

(F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(G) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(H) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(I) If the data processing system has the capacity to store all the information required in subparagraphs (E) and (F) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(J) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(5) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(A) The original prescription is voided and the following information is documented in the records of the transferring pharmacy:

(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(ii) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and

(iii) the date of the transfer.

(B) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(C) An electronic transfer between pharmacies may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(6) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraphs (4) and (5) of this subsection.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222C) to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222C) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222C) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222C) to the Divisional Office of the Drug Enforcement Administration.

(h) Other records. Other records to be maintained by a pharmacy:



(1) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) Copy 3 of DEA order form (DEA 222C) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222C order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy of the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(i) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug

orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(j) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

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

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Gay Dodson, R.Ph.

Executive Director/Secretary

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## SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

### 22 TAC §§291.72 - 291.74

The Texas State Board of Pharmacy adopts amendments to §291.72, concerning Definitions, §291.73, concerning Personnel, and §291.74, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4790).

The adopted amendments to §291.72 define physically present supervision and electronic supervision. The adopted amendments to §291.73 require the pharmacy to document the identity of each pharmacist involved in a specific portion of the distribution process if the pharmacy's data processing system is capable of recording such information and outline the duties for pharmacy technicians and pharmacy technician trainees that must be performed under the physically present supervision of a pharmacist and duties that may be performed under the electronic supervision of a pharmacist. The adopted amendments to §291.74 remove the storage of drugs requirements and locate the requirements in new §291.15, adopted elsewhere in this issue of the *Texas Register*, and replace the term substitute with the term interchange.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as

authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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## SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

### 22 TAC §§291.91 - 291.94

The Texas State Board of Pharmacy adopts amendments to §291.91, concerning Definitions, §291.92, concerning Personnel, §291.93, concerning Operational Standards, and §291.94, concerning Records. The amendments are adopted without changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4793).

The amendments incorporate the recommendations of the Task Force on Clinic Pharmacies (Class D). Specifically, the amendments, update the definition of "practitioner" to be consistent with the Texas Pharmacy Act; update formulary requirements to allow Class D pharmacies with expanded formularies to have antipsychotic drugs; prohibit Class D pharmacies from having Carisoprodol or drugs used to treat erectile dysfunction; allow Class D pharmacies with expanded formularies including drugs requiring special monitoring to submit policies and procedures regarding the provision of such drugs; clarify that Class D pharmacies wishing to add drugs to an expanded formulary must make such a request in writing to the Board prior to adding the drugs; require pharmacists to conduct retrospective drug reviews on a quarterly basis in Class D pharmacies with expanded formularies; require an initial order by a physician for antipsychotic drugs provided in a Class D pharmacy, followed by monitored therapy and at least yearly physical exams by the physician; and require a licensed nurse or practitioner to provide verbal and written information to the patient.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.133

The Texas State Board of Pharmacy adopts amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The amendments are adopted without changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4799).

The amendments remove the storage of drugs requirements and locate the requirements in new §291.15 adopted elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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## CHAPTER 305. EDUCATIONAL REQUIREMENTS

### 22 TAC §305.2

The Texas State Board of Pharmacy adopts amendments to §305.2, concerning Pharmacy Technician Training Programs. The amendments are adopted without changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4800).

The amendments clarify that individuals enrolled in pharmacy technician training programs must be registered with the Board prior to working in a pharmacy as part of the experiential component of the training program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §§551.002, 554.002, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.002 as authorizing the agency to adopt rules regarding the training, qualifications, and employment of pharmacy technicians. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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## CHAPTER 309. SUBSTITUTION OF DRUG PRODUCTS

### 22 TAC §309.3

The Texas State Board of Pharmacy adopts amendments to §309.3, concerning Generic Substitution with changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4800).

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Pharmacy contemporaneously withdraws the proposed amendments to §309.1, concerning Objective.

The amendments to §309.3 are adopted with changes based on comments received as described below.

Comments were received as follows:

The Epilepsy Foundation, Southeast Texas, commented that the proposed rules do not provide additional protection for patients with epilepsy and are not any different from what is in current law. The Board disagrees with this comment. A physician may now prohibit substitution by following the dispensing directive and if a physician allows substitution the pharmacy must dispense a

product that the federal Food and Drug Administration has determined to be equivalent to the brand name product.

The Generic Pharmaceutical Association commented that the proposed amendments: create an inference that one generic is better than another, with no data to back up such an implication; require pharmacies to increase inventories leading to increased costs of doing business; could increase marketing costs by encouraging generic drug manufacturers to launch marketing campaigns to promote their products; would result in higher costs to the State of Texas; and shelter the practitioner from having to explicitly set forth a clinical determination of the medical necessity for substitution prohibition. The Board disagrees with this comment; however, the Board has amended the proposed rules to delete the requirement regarding practitioners issuing prescriptions for a generic product with a particular manufacturer specified.

American Pharmacies commented in support of the rules regarding prescriptions issued for the brand name products when no generic product is available. However, American Pharmacies opposed the proposed rules regarding practitioners specifying a particular manufacturer. The Board disagrees with this comment; however, the Board had amended the proposed rules to delete the requirement regarding practitioners issuing prescriptions for a generic product with a particular manufacturer specified at this time.

UCB commented in support of the proposed language. The Board agrees with this comment; however, the Board is not adopting these requirements regarding practitioners issuing prescriptions for a generic product with a particular manufacturer specified at this time.

Texas Pharmacy Association requested that the Board further study the issue and postpone adoption of the proposed rules. The Board disagrees with the comments and believes the issue has been reviewed adequately.

Medco Health Solutions commented that the proposed rules could undermine the established FDA generic substitution guidelines and asked the Board to reconsider the amendments to ensure the amendments are in the interest of the public. The Board disagrees with this comment and believes that the rules as adopted are in the interest of the public.

The amendments are adopted under §§551.002, 554.051, and 562.0141 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.0141 as authorizing the agency, in consultation with the Texas Medical Board, to establish by rule a list of NTI drugs.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

#### §309.3. *Generic Substitution.*

(a) General requirements. In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug product if:

- (1) the generic product costs the patient less than the prescribed drug product;
- (2) the patient does not refuse the substitution; and

(3) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subsection (c) of this section.

(b) Prescription format for written prescription drug orders.

(1) A written prescription drug order issued in Texas may:

(A) be on a form containing a single signature line for the practitioner; and

(B) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(2) A pharmacist may dispense a prescription that is not issued on the form specified in paragraph (1) of this subsection, however, the pharmacist may dispense a generically equivalent drug product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subsection (c)(1) of this section.

(3) The prescription format specified in paragraph (1) of this subsection does not apply to the following types of prescription drug orders:

(A) prescription drug orders issued by a practitioner in a state other than Texas;

(B) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(C) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(4) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing directive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(c) Dispensing directive.

(1) General requirements. The following is applicable to the dispensing directive outlined in this subsection.

(A) When a prescription is issued for a brand name product that has no generic equivalent product, the pharmacist must dispense the brand name product. If a generic equivalent product becomes available, a pharmacist may substitute the generically equivalent product unless the practitioner has specified on the initial prescription that the brand name product is medically necessary.

(B) If the practitioner has prohibited substitution through a dispensing directive in compliance with this subsection, a pharmacist shall not substitute a generically equivalent drug product unless the pharmacist obtains verbal or written authorization from the practitioner, notes such authorization on the original prescription drug order, and notifies the patient in accordance with §309.4 of this title (relating to Patient Notification).

(2) Written prescriptions.

(A) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(B) The dispensing directive shall:

(i) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments; and

(ii) comply with federal and state law, including rules, with regard to formatting and security requirements.

(C) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(D) A practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(3) Verbal Prescriptions.

(A) If a prescription drug order is transmitted to a pharmacist orally, the practitioner or practitioner's agent shall prohibit substitution by specifying "brand necessary" or "brand medically necessary." The pharmacists shall note any substitution instructions by the practitioner or practitioner's agent, on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subsection (b)(1) of this section, or any other format that clearly indicates the substitution instructions.

(B) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(C) To prohibit substitution on a verbal prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(i) the practitioner or the practitioner's agent shall verbally indicate that the brand is medically necessary; and

(ii) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in paragraph (1) of this subsection within 30 days.

(4) Electronic prescription drug orders.

(A) To prohibit substitution, the practitioner or practitioner's agent shall note "brand necessary" or "brand medically necessary" in the electronic prescription drug order.

(B) If the practitioner or practitioner's agent does not clearly indicate in the electronic prescription drug order that the brand is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(C) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall fax a copy of the original prescription drug order which complies with the requirements of a written prescription drug order specified in paragraph (1) of this subsection within 30 days.

(5) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(A) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(i) prescription drug orders issued by a practitioner in a state other than Texas;

(ii) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(iii) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(B) A pharmacist may not substitute on prescription drug orders identified in subparagraph (A) of this paragraph unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(i) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(ii) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(I) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(II) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(III) Such documentation shall be updated yearly.

(d) Substitution of dosage form.

(1) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as tablets instead of capsules or liquid instead of tablets, provided:

(A) the patient consents to the dosage form substitution;

(B) the pharmacist notifies the practitioner of the dosage form substitution; and

(C) the dosage form so dispensed:

(i) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(ii) is not an enteric-coated or time release product; and

(iii) does not alter desired clinical outcomes;

(2) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(e) Refills.

(1) Original substitution instructions. All refills shall follow the original substitution instructions unless otherwise indicated by the practitioner or practitioner's agent.

(2) Narrow therapeutic index drugs.

(A) The board and the Texas Medical Board shall establish a joint committee to recommend to the board a list of narrow therapeutic index drugs and the rules, if any, by which this paragraph applies to those drugs. The committee must consist of an equal number

of members from each board. The committee members shall select a member of the committee to serve as presiding officer for a one year term. The presiding officer may not represent the same board as the presiding officer's predecessor.

(B) The board, on the recommendation of the joint committee, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.014, Occupations Code.

(i) The board has specified in §309.7 of this title (relating to dispensing responsibilities) that for drugs listed in the publication, pharmacist shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. For drugs listed in the publications, pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(ii) Practitioners may prohibit substitution through a dispensing directive in compliance with subsection (c) of this section.

(C) The board shall reconsider the contents of the list if:

(i) the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products; or

(ii) any interested person petitions the board to reconsider the list. If the board receives a petition to include a drug on the list, the joint committee specified in subparagraph (A) of this paragraph shall review the request and make a recommendation to the board.

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

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

##### DIVISION 1. PLAN OF OPERATION

##### 28 TAC §5.4001

The Commissioner of Insurance adopts amendments to §5.4001, concerning the Texas Windstorm Insurance Association Plan of Operation with changes to the proposed text as

published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5225). The amendment is adopted with changes because a typographical error in existing text, §5.4001(d)(1)(B)(ii) mistakenly contains a reference to subsection (f); the reference is corrected to read "in this subsection."

**REASONED JUSTIFICATION.** The amendments are necessary to authorize the Association to prepare financial information on a calendar year basis only rather than on both a calendar year and syndicate year basis, to calculate assessments for member companies on a calendar year basis rather than a syndicate year basis when funds available to the Association are insufficient to pay operating costs and/or catastrophe losses, and to eliminate a minimum cap (20 percent of a company's percentage of the statewide net direct written premiums) and a maximum cap (170 percent of a company's percentage of the statewide net direct written premiums) on a member company's Association assessment percentage.

Under the Insurance Code §2210.051, the Association is composed of all insurers authorized to transact property insurance in this state and operates pursuant to Chapter 2210 of the Insurance Code. The purpose of Chapter 2210 is to provide an adequate market for windstorm and hail insurance. Chapter 2210 "provides a method by which adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of this state." The funding structure for the Association established in Chapter 2210 of the Insurance Code includes assessments to member companies in the event that the Association's operating costs or catastrophe losses exceed the Association's premium and other revenue.

The Insurance Code §2210.151 requires the Commissioner to adopt by rule a plan of operation for the Association to provide Texas windstorm and hail insurance in catastrophe areas. The Insurance Code §2210.152(a)(2)(A) requires the plan of operation to include a plan for the equitable assessment of the members of the Association to defray losses and expenses. The Insurance Code §2210.052(a) specifies that Association members shall be assessed Association operating expenses and losses in the proportion that the net direct premiums of a member bears to the aggregate net direct premiums of all members, and the Insurance Code §2210.052(c) specifies this proportion shall be determined annually in a manner provided by the plan of operation. (As used in this adoption order, terms such as "net direct premiums," "voluntary writings in the catastrophe areas," "voluntary premiums for the catastrophe areas," and "similar insurance voluntarily written in the catastrophe areas," refer to windstorm and hail insurance.) The Insurance Code §2210.052(d) specifies that members are entitled to a credit for similar insurance voluntarily written in the catastrophe areas and that the credit shall reduce the member's share of the Association's expenses and losses in accordance with the plan of operation. The Insurance Code §2210.054(a) requires the Association to file annually with the Department a statement summarizing the transactions, conditions, operations and affairs of the Association during the preceding year. The Insurance Code §2210.054(a) also requires that the statement shall cover periods designated by the Department, and the Insurance Code §2210.054(b)(3) requires the statement to be in a form prescribed by the Department. Section 5.4001(b)(8) of the plan of operation requires the Association to submit to the Department an "annual report" on a calendar year basis. Section 5.4001(c)(1)(C)(i) of the plan of operation requires the Association to prepare each year a "statement of earnings" on a syndicate year basis.

The Adoption of Amendments to Allow the Calendar Year to Be Used as the Basis for Association Calculations. The adoption of amendments to §5.4001(c)(1)(C)(i), §5.4001(c)(1)(C)(ii), and §5.4001(c)(2)(B) of the plan of operation are necessary because the plan of operation requires the Association to use a syndicate year as a basis for calculations for two purposes: (i) to prepare each year an Association statement of earnings required by §5.4001(c)(1)(C)(i) of the plan of operation; and (ii) to calculate pursuant to §5.4001(c)(2)(B) of the plan of operation the total amount of member company assessments needed at a particular time to pay operating expenses and/or catastrophe losses and then to calculate pursuant to §5.4001(c)(1)(C)(ii) of the plan of operation the specific amount of the assessment each member company is required to pay. The adoption of amended §5.4001(c)(1)(C)(i), §5.4001(c)(1)(C)(ii) and §5.4001(c)(2)(B) of the plan of operation will allow the Association to use a calendar year basis rather than a syndicate year basis for calculations for these two specified purposes.

Generally, calculations done on a calendar year basis are less cumbersome and time-consuming than calculations based on a syndicate year, can be prepared and finalized earlier, and reflect more current information. Thus, changing from the syndicate year basis for calculations for the Association to the calendar year basis for calculations is consistent with the requirements of the Insurance Code §2210.152(a)(1) that the plan of operation provide for the efficient and economical administration of the Association.

A syndicate year is determined by the effective and the expiration dates of a policy. For example, syndicate year 2007 covers all policies with an effective date beginning in 2007. Under the syndicate year system, earnings and losses cannot be fully determined until the syndicate year closes. The syndicate year closes when all policies with an effective date in 2007 expire, typically twelve months after the date a policy became effective. Therefore, earnings and losses from syndicate year 2007 will not be fully determined until late in the year 2008. Calculations done by syndicate year attempt to link earnings and losses according to actual policy cycles and require the books for a syndicate year to be kept open for approximately two years.

A calendar year is determined by the Gregorian calendar beginning each year on January 1 and ending on December 31. All premiums and revenue taken in during a particular calendar year are added together, and losses and expenses incurred during the same calendar year are subtracted from the calendar year total of premiums and revenue. Calendar year premiums, revenue, and losses can be determined quickly after the close of the calendar year on December 31.

*The Adoption of Amendments to Allow the Calendar Year to Be Used as the Basis for the Statement of Earnings.* The Insurance Code §2210.054(a) requires the Association to file annually with the Department a statement summarizing the transactions, conditions, operations and affairs of the Association during the preceding year. Subsections (a) and (b)(3) of the Insurance Code §2210.054 require that the statement cover periods designated by the Department.

Section 5.4001(b)(8) of the plan of operation requires that the Association "file with the Department annually a statement which shall summarize the transactions, conditions, operations, and affairs of the Association during the preceding calendar year." The report required by §5.4001(b)(8) of the plan of operation is the Association's "annual report" and is prepared on a calendar year basis. Section 5.4001(c)(1)(C)(i) of the plan of

operation currently provides that "Each year the Association will prepare a statement of earnings by syndicate year." Because §5.4001(b)(8) and §5.4001(c)(1)(C)(i) differ, the Association keeps two sets of books for its financial reporting: one by calendar year for the annual report and one by syndicate year for the statement of earnings.

References in §5.4001(c)(1)(C)(i) of the plan of operation to a "syndicate" year are deleted and replaced with the term "calendar" year and the explanation of a "syndicate" year in §5.4001(c)(1)(C)(i) of the plan of operation is deleted. Section 5.4001(b)(8) is not amended. As a result, the adoption of the amendments will eliminate the current requirement that the Association keep two sets of books, one by syndicate year and one by calendar year. The required financial reports of the Association, such as the annual report and the statement of earnings, will be uniformly made on a calendar year basis. The adopted amendments to §5.4001(c)(1)(C)(i) of the plan of operation will allow the Association to complete the statement of earnings following the close of a calendar year on December 31, rather than at the completion of the syndicate year many months later. The Association statement of earnings based on a calendar year will be produced more efficiently by the Association, be understood more easily by the member companies and the public, and be based on more current information. The book-keeping obligations of the Association will become more efficient.

The adoption of amendments to §5.4001(c)(1)(C) of the plan of operation will result in an improved Association plan of operation that will provide for a more efficient and economical administration of the Association, as mandated by the Insurance Code §2210.152(a)(1).

*The Adoption of Amendments to Allow the Calendar Year to Be Used as a Basis for Association Assessments.* The Insurance Code §2210.152(a)(2)(A) requires the Association plan of operation to include a plan for the equitable assessment of the member companies to defray losses and expenses. Pursuant to §5.4001(c)(2)(A) of the plan of operation, the member companies may be required to pay assessments to the Association to adequately provide for the operating expenses of the Association and/or for catastrophe losses. If the board of directors of the Association determines that the funds then available to the Association are insufficient for either or both purposes, the board assesses member companies under the authority of §5.4001(c)(2)(A)(ii) of the plan of operation in reasonable and necessary amounts to provide for the operating expenses and/or catastrophe losses.

The plan of operation currently requires in §5.4001(c)(2)(B) that the board of directors determine the amount of assessment required for operating expenses and/or catastrophe losses using syndicate year calculations. For example, under the current system of calculating assessments by syndicate year, if a storm occurs in September 2008 and an assessment is necessary, the Association must determine how much of the assessment is due to Association policies with an effective date in 2007 (which may still be in effect in September 2008) and how much is due to policies with an effective date in 2008. Generally, in order to calculate each member company's share of an assessment, the assessment is multiplied by each member company's assessment percentage. The assessment percentage is determined annually and is generally described as the ratio of the member company's net direct premiums written statewide to the aggregate net direct premiums written statewide by all members of the

Association, adjusted by a credit for each member company's voluntary premiums written in the catastrophe areas.

Using the example of a storm occurring in September 2008 and using the syndicate year basis of calculation required by §5.4001(c)(2)(C)(ii), the member company's assessment percentage applicable to 2007 will be multiplied by the amount of the assessment due to Association policies with an effective date in 2007 (syndicate year 2007), and the member company's assessment percentage applicable to 2008 will be multiplied by the amount of the assessment due to Association policies with an effective date in 2008 (syndicate year 2008). The resulting two figures will be added together to determine each company's total assessment amount for the single event occurring in September 2008.

However, there are two factors inherent in the use of a syndicate year as a basis of calculation: (i) final figures for a syndicate year are frequently not available at the time of an assessment and require later reconciliation; and (ii) the use of a syndicate year basis in determining assessments delays the effect of increases or decreases in voluntary writings in the catastrophe areas on the amount of a member company's assessment.

Using the September 2008 example, some of the premiums, revenue, expenses, and losses for Association policies with an effective date in 2007 that have not expired as of the date of the loss in September 2008, and much of the premiums, revenue, expenses, and losses for Association policies with an effective date in 2008 in effect as of the date of the loss, are not yet known. After the assessment is made, calculations for syndicate year 2007 must be finalized; and then even later in 2009, calculations for syndicate year 2008 must be completed. The assessment for the September 2008 storm must be reconciled against the final accounting for syndicate years 2007 and 2008. If member companies overpaid their share of an assessment, they receive a refund; if member companies underpaid their share of an assessment, they receive an additional notice of assessment.

As the September 2008 example illustrates, policies with effective dates in two different years are usually in effect at the time of an assessment. Section 5.4001(c)(1)(C)(ii) of the plan of operation currently requires that the assessment portion for the prior syndicate year be multiplied by the member company's prior year's assessment percentage and that the assessment portion for the current syndicate year be multiplied by the member company's assessment percentage for the current year. Assessment percentages, which are determined annually, are required by §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) of the plan of operation to be adjusted by a credit for similar insurance voluntarily written in the catastrophe areas. Therefore, part of an assessment determined under the current plan of operation is based on an assessment percentage applicable to a prior syndicate year, which may not reflect recent voluntary writings in the catastrophe areas, or may reflect voluntary writings no longer in effect.

Section 5.4001(c)(1)(C)(ii), §5.4001(c)(2)(B), and §5.4001(c)(2)(B)(i) of the plan of operation are adopted to be amended to delete references to "syndicate" year and replace them with the term "calendar" year so that assessments will be calculated on a calendar year basis. Using the September 2008 example and using the calendar year basis of calculation, the Association will determine the amount of assessment needed after the storm according to the premium and revenue available to date for calendar year 2008, including available funds in the catastrophe reserve trust fund and from reinsurance proceeds, if applicable. With the adoption of the amendments, the

determination of the assessment will be based on the calendar year only and the Association will use one set of figures rather than the two required by the syndicate year basis, making the assessment easier to prepare. There will be no need to refer to 2007 calculations for the Association's earnings and losses, because the assessment amount will be based on insured losses, operating expenses, and premiums and other revenue transactions of the Association that occurred during calendar year 2008. Under most circumstances, calculations for an assessment prepared on a calendar year basis will eliminate the need to reconcile final figures, reducing the need for refunds or further assessments. Under the adopted amendments, all of an assessment will be determined using the current assessment percentage, which reflects member companies' most recent voluntary writings in the catastrophe areas. Eliminating the delay in the effect of member companies' increased or decreased voluntary writings in the catastrophe areas will provide an incentive to all member companies to maintain or provide similar insurance in the catastrophe areas, which may reduce property owners' reliance on the Association to provide windstorm and hail insurance coverage.

The Adoption of Amendments to Eliminate Minimum and Maximum Caps on Member Companies' Assessment Percentages. The Insurance Code §2210.052(a) and §2210.052(c) specify that Association members shall be assessed Association operating expenses and losses in the proportion that the net direct premiums of a member bears to the aggregate net direct premiums of all members and that this proportion shall be determined annually in a manner provided by the plan of operation. The Insurance Code §2210.052(b) requires the Department to review data and information it considers necessary to determine the annual assessment percentage and to provide that information to the Association. The Insurance Code §2210.152(a)(2)(A) requires the plan of operation to include a plan for the equitable assessment of the members of the Association to defray losses and expenses. The Insurance Code §2210.052(d) specifies that members are entitled to a credit for similar insurance voluntarily written in the catastrophe areas and that this credit is to be used to reduce a member's assessment percentage in accordance with the plan of operation. The plan of operation in §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) specifies the minimum and maximum caps to be used to adjust the calculation of a member company's assessment percentage. The adoption of amendments to §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) will eliminate these minimum and maximum caps.

The elimination of minimum and maximum caps on companies' Association assessment percentages will result in assessment percentages that more accurately reflect the credit for a member company's voluntary writings in the catastrophe areas, or lack thereof.

Pursuant to §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(iv) of the plan of operation, as a part of the regular operations of the Association, the Association receives information from the Department on the aggregate net direct premiums written in the state during the preceding calendar year and the net direct premiums written in the state by each member company during the same period. Each member company's percentage of the net direct premiums written in the state is calculated from those annual figures. Thus, a company's assessment percentage for 2008 is based on premium information supplied to the Department for calendar year 2007.

To implement the requirement in the Insurance Code §2210.052(d) that members are entitled to a credit for similar insurance voluntarily written in the catastrophe areas, §5.4001(c)(2)(B)(i) of the plan of operation requires the determination of a member company's "normal required quota" of business in the catastrophe areas for the preceding calendar year. A member company's normal required quota of business in the catastrophe areas is calculated by multiplying its percentage of the net direct statewide market for the preceding calendar year by the total premiums written in the catastrophe areas (which are total Association premiums plus total voluntary premiums for the catastrophe areas) during the preceding calendar year. The total of the company's actual written premiums in the catastrophe areas for the preceding calendar year is then subtracted from the member company's normal required quota for the same time period. The difference is then divided by the total of all member companies' normal required quotas for the preceding calendar year minus their actual written premiums in the catastrophe areas during the preceding calendar year. The resulting quotient is a member company's unadjusted assessment percentage for the following calendar year.

Currently, pursuant to §5.4001(c)(2)(B)(i) of the plan of operation, the member company's unadjusted assessment percentage is then compared to its percentage of net direct statewide premiums written during the preceding calendar year. If the member company's unadjusted assessment percentage is less than 20 percent of the company's percentage of the net direct statewide premiums written during the preceding calendar year, the unadjusted assessment percentage is adjusted upward to 20 percent of the company's percentage of net direct statewide premiums written during the preceding calendar year (minimum cap). If the company's unadjusted assessment percentage is more than 170 percent of the company's percent of the net direct statewide premiums written during the preceding calendar year, the quotient is adjusted downward to 170 percent of the company's percentage of net direct statewide premiums written during the preceding calendar year (maximum cap). While the application of minimum and maximum caps to the assessment percentage is required by the plan of operation, it is not required by Chapter 2210 of the Insurance Code. The adjusted assessment percentage (after the application of an offset factor designed to ensure that the sum of all member companies' assessment percentages totals 100 percent) is the net assessment percentage for a member company for the following calendar year.

If, pursuant to the Insurance Code §2210.052, §2210.058, and §2210.152(a)(2)(A), an assessment is necessary, the net assessment percentage for a member company is then multiplied by the total amount of assessment the board of directors has determined is needed pursuant to §5.4001(c)(2)(B) of the plan of operation. Under §5.4001(c)(2)(D)(i) of the plan of operation, the member company must remit this amount within 30 days of the receipt of the notice of assessment or have its certificate of authority to transact the business of insurance suspended by the Commissioner until such time as the Association certifies to the Commissioner that such assessment has been paid in full.

The adoption of amendments to §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) of the plan of operation will eliminate the application of minimum and maximum caps on member companies' Association assessment percentages. The elimination of minimum and maximum caps on companies' Association assessment percentages will result in assessment percentages



that more accurately reflect a member company's voluntary insurance writings in the catastrophe areas, or lack thereof.

Additionally, the elimination of the minimum cap allows a member company to fully realize the benefits of its voluntary writings in the catastrophe areas and results in a less costly assessment for the company if an assessment is necessary. Under current §5.4001(c)(2)(B)(i) of the plan of operation, a company that has written its entire normal required quota in the catastrophe areas during the preceding calendar year would have an unadjusted assessment percentage calculated at less than 20 percent of its percentage of net direct statewide premiums written during the preceding calendar year. The unadjusted assessment percentage would nonetheless be adjusted upward to 20 percent of its percentage of net direct statewide premiums written during the preceding calendar year, resulting in a loss of credit for voluntary writings greater than zero percent but less than 20 percent of a company's percentage of net direct statewide premiums written during the preceding calendar year. After the adoption of amendments to §5.4001(c)(2)(B)(i) of the plan of operation, if a member company's unadjusted assessment percentage ranges from any percentage greater than zero to 20 percent of its percentage of net direct statewide premiums written, that percentage will become the net assessment percentage (after application of a final offset factor) reflecting full credit for voluntary writings in the catastrophe area during the preceding calendar year.

Conversely, under current §5.4001(c)(2)(B)(i) of the plan of operation, a company with a sizable market share but a small amount of voluntary writings in the catastrophe areas during the preceding calendar year may have an unadjusted assessment percentage calculated that is more than 170 percent of its percentage of net direct statewide premiums written during the preceding calendar year. After the adoption of the amendments, the assessment percentage will not be adjusted down to 170 percent of its percentage of net direct statewide premiums written during the preceding calendar year. The maximum cap will not provide a member company a credit for voluntary writings that do not exist.

**HOW THE SECTION WILL FUNCTION.** Adopted amendments to §5.4001(c)(1)(C)(i) will require the Association to prepare a statement of earnings by calendar year. This will be consistent with the requirement in §5.4001(b)(8) that the Association file an annual report with the Department each calendar year.

Adopted amendments to §5.4001(c)(1)(C)(ii) will require that each company apply its assessment percentage applicable to each calendar year. Adopted amendments to §5.4001(c)(2)(B) will require that the board of directors determine on a calendar year basis which members of the Association will be assessed for operating expenses or catastrophe losses. When the board of directors determines pursuant to §5.4001(c)(2) that an assessment of members is necessary, the amount of assessment will be calculated according to the calendar year and only the assessment percentage for that calendar year will be used to determine a member's share of the assessment.

Adopted amendments to §5.4001(c)(2)(B)(i) no longer require the application of minimum and maximum caps in determining a member's assessment percentage. The chart summarizing the procedures of §5.4001(c)(2)(B)(i) is updated and Columns 10 and 11 of the chart are deleted because they describe the application of minimum and maximum caps to assessment percentages. Existing §5.4001(c)(2)(B)(ii) and §5.4001(c)(2)(B)(iii) are deleted, and

amended §5.4001(c)(2)(B)(iv) and §5.4001(c)(2)(B)(v) are redesignated as §5.4001(c)(2)(B)(ii) and §5.4001(c)(2)(B)(iii).

#### SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

**Comment:** One commenter noted that the use of the syndicate year was appropriate in the early days of the Association because it was thought that members would share in the "equity" of the Association. The evolution of the Association has made that concept outdated. In the commenter's opinion, the calendar year method of calculation reflects more accurately the Association's true financial status and is therefore superior for determining member's assessments.

The same commenter supported the elimination of minimum and maximum caps on the assessment percentages because the elimination of the caps will increase incentives to write voluntary insurance in the catastrophe areas.

**Agency Response:** The Department appreciates the supportive comments

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

**For:** Galveston Windstorm Action Committee.

**Against:** None.

**STATUTORY AUTHORITY.** The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.151 requires the Commissioner by rule to adopt the Association plan of operation to provide Texas windstorm and hail insurance in the catastrophe areas. The Insurance Code §2210.152(a)(1) requires that the plan of operation provide for the efficient, economical, fair, and non-discriminatory administration of the Association.

The Insurance Code §2210.054 requires the Association to file an annual statement containing information prescribed by the Department and in the form prescribed by the Department.

The Insurance Code §2210.152(a)(2)(A) requires the plan of operation to include a plan for the equitable assessment of the members of the Association to defray losses and expenses. The Insurance Code §2210.052(a) requires that a member company share in the losses and/or expenses of the Association based on the proportion that the net direct premiums of that member during the preceding calendar year bears to the aggregate net direct premiums by all members of the Association. Under the Insurance Code §2210.052(c), a member company's share of the losses and/or expenses of the Association is required to be determined annually and in the manner provided by the plan of operation. In the determination of a member company's share of the losses and/or expenses of the Association, the Insurance Code §2210.052(d) specifies that members are entitled to a credit for insurance voluntarily written in the catastrophe areas. The Insurance Code §2210.052(d) also requires that the method for calculating the credit be contained in the plan of operation. The Insurance Code §2210.053(b) encourages the Department to develop a program designed to create incentives for insurers to write voluntary windstorm and hail insurance in the catastrophe areas.

Pursuant to the Insurance Code §2210.153(a)(1), the Association may present a recommendation for a change in the plan of operation to the Department. The Insurance Code §2210.153(b) requires proposed changes to the plan of operation to be in writing in the manner prescribed by the Commissioner. The proposed change does not take effect unless adopted by the Com-

missioner by rule. The Insurance Code §36.001 authorizes the Commissioner of Insurance to 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.

§5.4001. *Plan of Operation.*

(a) Definitions.

(1) Words defined in Act. Unless the context clearly dictates the contrary, words defined in the Texas Catastrophe Property Insurance Pool Act (the Insurance Code, Article 21.49, as amended) and not specifically defined in this section shall have the same definition when used in this section as they have in such Act. The terms "this section" and "plan of operation" are used interchangeably herein.

(2) Definitions in the section. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Act--The Texas Catastrophe Property Insurance Pool Act, Senate Bill 31, Acts of the 62nd Legislature, 1971, as amended; codified as the Insurance Code, Article 21.49, as amended.

(B) Application--An application for catastrophe insurance.

(C) Association--The Texas Catastrophe Property Insurance Association.

(D) Board--The State Board of Insurance.

(E) Board of directors--The board of directors of the Texas Catastrophe Property Insurance Association.

(F) Catastrophe insurance--For the purpose of this plan of operation, means Texas windstorm and hail insurance.

(G) Catastrophe loss--A loss to property insured by a policy of Texas windstorm and hail insurance. "Catastrophe losses" means more than one catastrophe loss.

(H) Chair of the board--The chair of the board of directors of the Texas Catastrophe Property Insurance Association.

(I) Commissioner--Commissioner of Insurance of the State of Texas.

(J) Corporeal property--Tangible personal property.

(K) Department--Texas Department of Insurance.

(L) Indirect losses--Personal Lines.

(i) Except as provided in clause (iii) of this subparagraph, a policy of windstorm and hail insurance issued by the association for a dwelling as defined by the Department in the association's rates and rules manual, must include coverage for:

(I) wind-driven rain damage, regardless of whether an opening is made by the wind;

(II) loss of use, meaning additional living expenses; and

(III) consequential losses.

(ii) Except as provided in clause (iii) of this subparagraph, a policy of windstorm and hail insurance issued by the association for tenant contents of a dwelling or other residential building must include coverage for:

(I) loss of use, meaning additional living expenses; and

(II) consequential losses.

(iii) The association is not required to:

(I) offer coverage for indirect losses as provided in clauses (i) and (ii) of this subparagraph unless the coverage was excluded from a companion policy issued in the voluntary market; or

(II) provide loss of rents or loss of rental value coverage as part of a loss of use coverage or additional living expense coverage to a secondary or non-primary residence.

(M) Member--An insurer required to be a member of the association by the Act, §4, or where the context indicates, any duly authorized agent or representative of such insurer. "Members" shall mean more than one member.

(N) Net direct premiums--

(i) For association policies with inception dates on and after January 1, 1993, "net direct premiums" shall mean all statewide direct written premiums (excluding direct written premiums in catastrophe area as designated by the Commissioner) and shall be the sum of the following:

(I) 90% of the direct written premiums of the extended coverage line of business and 90% of the direct written premiums on the other allied lines of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary;

(II) 90% of the extended coverage and other allied lines portion of the direct written premiums on the multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary; and

(III) 50% of the direct written premium or such other percentage as may be determined by the board of directors of the association, without further action by the Commissioner, upon analysis of appropriate statistics for wind, hail, water damage, and all other perils, on the homeowner's multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary and farm and ranch owners' multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary, provided, no adjustment of five percentage points or less shall be made, and further provided, that no adjustment shall be made in less than three years from the last prior adjustment;

(IV) the extended coverage and other allied lines portion of the following policies, which shall be calculated as follows:

(-a-) 40% of the total premium for any commercial policy issued under a composite rate; or

(-b-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium

charged whichever is greater, for any property insurance policy written by an insurance company that is not authorized to transact property insurance in Texas, and which is affiliated under common management or control of an insurance company licensed to transact property insurance in Texas.

(ii) For association policies with inception dates on and after January 1, 1988, through December 31, 1992, "net direct premiums" shall mean all statewide direct written premiums (excluding direct written premiums in the catastrophe area as designated by the State Board of Insurance) restored to manual level and further adjusted to the manual rate level applicable to the catastrophe area as designated by the State Board of Insurance and shall be the sum of the following:

(I) 90% of the direct written premiums of the extended coverage line of business and 90% of the direct written premiums on the other allied lines of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance which the association shall obtain from the Department and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary;

(II) 90% of the extended coverage and other allied lines portion of the direct written premiums on the multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary;

(III) 50% of the direct written premium or such other percentages as may be determined by the board of directors of the association, without further action by the Commissioner, upon analysis of appropriate statistics for wind, hail, water damage, and all other perils, on the homeowner's multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary and farm and ranch owners' multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary, provided, no adjustment of five percentage points or less shall be made, and further provided, that no adjustment shall be made in less than three years from the last prior adjustment.

(IV) the extended coverage and other allied lines portion of the following policies, which shall not be restored to manual rate levels, and which shall be calculated as follows:

(-a-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is the greater, for any commercial policy issued pursuant to the Insurance Code, Article 5.13-2 or Article 5.26(c), or for policies issued pursuant to the Insurance Code, Article 5.31; or

(-b-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is greater, for any property insurance policy written by an insurance company that is not authorized to transact property insurance in Texas, and which is affiliated under common management or control of an insurance company licensed to transact property insurance in Texas.

(iii) For association policies with inception dates on and after January 1, 1983 through December 31, 1987, inclusive, net direct premiums means the sum of the following premiums:

(I) 90% of the direct written premiums on the extended coverage line of business as reflected on line two, column (1), of the insurer's last Texas annual statement;

(II) 90% of the extended coverage portion of the direct written premiums on the multiple peril line of business as reported on line eight, column (1), of the insurer's last Texas annual statement; and

(III) 40% of the direct written premiums on the homeowners' multiple peril line of business as reported on line four, column (1), of the insurer's last Texas annual statement.

(iv) For association policies with inception dates on and after January 1, 1978, through December 31, 1982, inclusive, net direct premiums means the sum of the following premiums:

(I) 90% of the direct written premiums on the extended coverage line of business as reflected on line two, column (1), of the insurer's last Texas annual statement;

(II) 90% of the extended coverage portion of the direct written premiums on the multiple peril line of business as reported on line eight, column (1), of the insurer's last Texas annual statement; and

(III) 40% of the direct written premiums on the homeowners' multiple peril line of business as reported on line four, column (1), of the insurer's last Texas annual statement.

(O) Secretary-treasurer--The secretary-treasurer of the Texas Catastrophe Property Insurance Association.

(P) Texas windstorm and hail insurance--Deductible insurance against direct loss and indirect losses resulting from a direct loss to insurable property as a result of windstorm or hail as such terms shall be defined and limited in policies and forms approved by the Commissioner. The deductible amount which shall be applied to all risks written by the association shall be determined by the board of directors and approved by the Commissioner.

(Q) Vice chair or vice chair of the board--The vice chair of the board of directors of the Texas Catastrophe Property Insurance Association.

(b) Operational Procedures of the Texas Catastrophe Property Insurance Association.

(1) Members.

(A) Membership. The membership of the Texas Catastrophe Property Insurance Association shall consist of all insurers required to be members of the association by the Act, §4; provided, however, that all insurers which were not members of the association prior to the effective date of Senate Bill 659, 64th Legislature, 1973, and which became members of the association by virtue of Senate Bill 659 shall participate in the association commencing on January 1, 1974, in the same manner as for all other members of the association, provided, further, that for the purposes of determining participation in the association two or more members having a common ownership or operating in this state under common management or control shall be treated as if they constituted a single member.

(B) Notice of meetings. Written or printed notice stating the place, day, and hours of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of

the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary-treasurer, or other person calling the meeting, to each member entitled to vote as such meeting.

(C) Meetings. The annual meeting of the members shall be held at such time and place in March of each year as may be designated by the board of directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors shall not be held on the day designated for any annual meeting of the members, the board of directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be. The board of directors shall designate the place for the annual meeting of the members, but if no place is so designated, then the meeting shall be held at the office of the association. The board of directors, the chair of the board of directors, or 25% of the members of the association may call a special meeting of the members and designate any place as the place of such meeting. If no such designation is made, the place of such meeting shall be the aforesaid office of the association.

(D) Quorum. Twenty-five percent of the members represented by person or by proxy shall constitute a quorum at a meeting of the members. If less than 25% of the members are represented at a meeting, a majority of the outstanding members so represented may adjourn the meeting from time to time without further notice. At the next meeting after adjournment at which a quorum shall be present or represented, any business may be transacted at the meeting as originally notified. The members represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough persons to leave less than a quorum.

(E) Voting.

(i) The secretary-treasurer of the association shall make, at least 10 days before each meeting of the members of the association, a complete list of the members entitled to vote at such meeting, arranged in alphabetical order, with the address of each member and the number of votes allocated to each member which list, for a period of 10 days prior to such meeting, shall be kept on file at the principal office of the association and shall be subject to inspection by any member or its agent at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of such meeting. Failure to comply with the requirements of this clause shall not affect the validity of any action taken at such meeting.

(ii) There shall be 1,000 outstanding votes allocated to the members of the association by the secretary-treasurer. The secretary-treasurer shall determine the percentage of each member's participation in the writings, expenses, profits, and losses of the association computed on the date of the end of the last calendar year preceding such annual meeting at which information necessary to make such computation is available from the Department, and shall allocate to each member a like percentage of the total outstanding votes allocated to the members of the association. Each member shall be entitled to vote its allocated number of outstanding shares at the annual meeting and each special meeting until the next annual meeting of the association at which time the outstanding votes shall be again allocated to the members in the manner set forth previously.

(iii) A member may vote by proxy executed in writing by the member. No proxy shall be valid after the next annual meeting after the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable.

(iv) The votes allocated to a member may be voted by such officer, agent, or proxy as the bylaws of such member may

authorize or, in the absence of such authorization, as such member may determine.

(v) Voting on any question or in any election may be by voice vote or by show of hands unless the presiding officer shall order, or any member shall demand, that voting be by written ballot.

(F) Rules. To the extent applicable, Robert's Rules of Order shall govern the conduct of and procedure at all meetings of the members.

(2) Directors.

(A) Election. At the first annual meeting of members and at each annual meeting thereafter, the members shall elect the appropriate number of directors from the membership of the association in accordance with subparagraph (B) of this paragraph. Directors, other than from the membership, shall be appointed in accordance with subparagraph (C) of this paragraph. The total number of directors of the association shall be nine.

(B) Directors elected from the membership.

(i) Five directors shall be five different insurers licensed in Texas and members of the association and elected by the members. No member shall fill more than one seat on the board of directors.

(ii) No later than 60 days prior to the annual meeting in March 1992, the board of directors shall nominate the five-member companies to serve on the board of directors. In making such nominations, the board of directors shall consider the following factors in nominating a member to serve.

(I) A minimum of three members shall be companies with multistate operations.

(II) A minimum of one member shall be a company domiciled in the State of Texas.

(III) Consideration should be given to voluntary market shares of members; voluntary participation in the catastrophe area; specific expertise in the underwriting, claims handling, or reinsurance of insurance required to be provided by the association; companies that represent as far as possible the view of the member companies; and other factors deemed relevant by the board of directors.

(iii) No later than 60 days prior to the annual meetings, the chair shall appoint a nominating committee of not less than three, nor more than seven, member companies, each to act through its designated representative, said committee to represent as far as possible the view of the member companies. Said committee shall prepare and present to member companies a list of nominations for the board of directors.

(iv) Members also have the right to nominate any member by submitting such nominee's name to the nomination committee. In order to be eligible for election to the board of directors, a member must be nominated at least 30 days prior to the annual meeting at which directors are elected.

(C) Directors appointed by the Commissioner. The number of directors composed of licensed local recording agents and members of the public shall be four. Each of these directors must be from different counties in the designated catastrophe area.

(i) The Commissioner shall appoint two public representatives nominated by the Office of the Public Insurance Counsel to serve on the board of directors. The public representatives shall be persons who are policyholders of the association as of the date of appointment.

(ii) The Commissioner shall appoint two licensed local recording agent representatives to serve on the board of directors.

(D) Term of office. Each director shall hold office for the term of three years from the date of the election or appointment or until a successor shall have been elected or appointed. The terms of the directors shall be staggered so that three directors shall be elected by the membership of the association and/or appointed by the Commissioner annually. A person may hold a seat on the board of directors for not more than three consecutive full terms, not to exceed nine years.

(E) Regular meetings. A regular meeting of the board of directors shall be held with notice to the directors at least ten days before each regular meeting as provided for in this subsection. Notice of any regular meeting of the directors shall also be given to the Department in care of the associate commissioner of property-casualty, or such other person as may be designated by the Commissioner, as required by the Texas Insurance Code, Article 21.49, §5(k). Public notice of meetings shall be given as required by the Government Code, Chapter 551.

(F) Notice of regular or emergency meeting.

(i) Notice of any regular meeting shall be given to the directors at least ten days prior thereto by notice delivered personally or mailed to each director at his/her business address or by telegram, or such other reasonable means of notice to provide actual notice to each director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed with postage thereon prepaid. If the notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. If the notice is by other reasonable means, the association shall maintain a written record of the method of notification. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice to the director of such meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

(ii) In case of emergency or urgent public necessity, notice to directors and to the Department shall be given at least two hours before a meeting is convened. Notice to the public shall be given as required for an emergency meeting pursuant to the Government Code, §551.045.

(iii) Any meeting of the board of directors of the association conducted by conference call is subject to the same requirements applicable to other meetings of the board of directors.

(G) Regular or emergency meetings. Regular or emergency meetings of the board of directors may be called by the chair of the board or at the request of any two directors. The person or persons authorized to call a meeting of the board of directors may fix any place as the place for holding any meeting of the board of directors called by them. If no place is designated, then the office of the association shall serve as the place of such meeting.

(H) Statement of purpose of meeting required. The business to be transacted at, and the purpose of, any regular or emergency meeting of the board of directors shall be specified in the notice to directors and in notice required by statute as required by the Government Code, Chapter 551.

(I) Quorum. A majority of the number of directors fixed by this section shall constitute a quorum for the transaction of business at any meeting of the board of directors. Action taken by a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. If at any meeting of the board of directors there shall be less than a quorum present, a majority of those

present may adjourn the meeting from time to time until a quorum is obtained.

(J) Presumption of assent. A director of the association who is present at the meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting, or unless the director shall file a written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the secretary of the association immediately after the adjournment of the meeting. Such right to dissent shall not be available to a director who voted in favor of such action.

(K) Compensation. By resolution of the board of directors, the directors may be reimbursed for their actual expenses. No other payment shall be made to directors other than provided herein, except however, that nothing herein shall be construed as preventing any director from serving the association in any other capacity and receiving reimbursement for actual expenses incurred.

(L) General powers. The board of directors shall have the management of the business and affairs of the association and may exercise all of the powers herein enumerated and all other powers incidental or appropriate thereto, subject only to the restrictions imposed by law. Included among the powers of the board of directors, but not in limitation thereof, are the following:

(i) to make and change regulations not inconsistent with this section for the management of the business affairs of the association;

(ii) to purchase or otherwise acquire for the association any property, rights, or privileges which the association is authorized to acquire;

(iii) to remove any officer for cause, summarily without cause, and in their discretion, from time to time, to dissolve the powers and duties of any officer and to confer such powers and duties upon any other person for the time being;

(iv) to appoint and remove or suspend such subordinate officers, attorneys, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change their salaries or remuneration, and to require security as and when they think fit;

(v) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers, employees, and representatives;

(vi) to determine who shall be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;

(vii) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officer or agent (with power to subdelegate) upon such terms as they may deem appropriate;

(viii) to contract with a servicing facility to perform such services for the association as it may deem appropriate;

(ix) to approve expenses, levy assessments, including preliminary assessments;

(x) to have all other powers and to perform all other duties reasonably necessary to accomplish the purposes of the Act.

(M) Executive committee. An executive committee shall consist of at least three, and not more than four, of the directors

of the association and shall include the chair, vice-chair, and secretary-treasurer. At least one director appointed by the Commissioner must be elected as an officer. The board of directors may elect an additional director to be a member of the executive committee for the sole purpose of ensuring the inclusion of at least one insurer, one agent, and one public member on the executive committee. To the extent provided by resolution or resolutions of the board of directors, the executive committee shall have and may exercise the powers delegated by the board of directors in the day-to-day administrative management of the association. Such committee shall keep regular minutes of its proceedings and report the same to the board of directors. The delegation to a committee of authority consistent with this section shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or member by law.

(N) Vacancies.

(i) A particular directorship shall be considered to be vacant upon the resignation of the member holding such directorship.

(ii) Any vacancy occurring in the directors elected from the membership may be filled at the next meeting of the board of directors following the occurrence of such vacancy. Subject to the provisions of subparagraph (B) of this paragraph, such vacancy shall be filled by the affirmative vote of a majority of the remaining directors elected from the membership though less than a quorum. A director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in such directorship.

(iii) Any vacancy occurring in the directors appointed by the Commissioner shall be filled by appointment of a new director in accordance with the provisions of subparagraph (C) of this paragraph.

(3) Officers.

(A) Number. The officers of the association shall be the chair of the board of directors, the vice chair of the board of directors, and the secretary-treasurer, all of whom shall be elected by the board of directors. No two offices may be held by the same person. The chair, vice-chair, and secretary-treasurer shall serve on the executive committee. At least one director appointed by the Commissioner must be elected as a member of the executive committee.

(B) Election and term of office. The officers of the association may be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified or until the officer's death or until the officer shall resign or shall have been otherwise removed. The board of directors shall provide for a rotation of directors elected as officers at least every two years.

(C) Removal of officers. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the association would be served thereby or otherwise in accordance with this section, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

(D) Chair of the board of directors. The chair of the board of directors shall preside at all meetings of the members and at all meetings of the directors, appoint and discharge employees and persons representing the association subject to the approval of the direc-

tors, fix the compensation of employees and such representatives, make and sign contracts and agreements in the name of the association, and appoint committees. The chair shall see that the books, reports, statements, and certificates are properly kept, made, and filed if necessary, and shall generally do and perform all acts incident to the office of chair of the board of directors or which may be authorized or required by law, by this section, or by the board of directors, not inconsistent herewith.

(E) Vice chair of the board of directors. The vice chair of the board of directors elected by the board of directors shall have such powers and shall perform such duties as shall be assigned by the board of directors not inconsistent herewith.

(F) Secretary-treasurer. The secretary-treasurer shall:

(i) keep the minutes of the members and of the board of directors' meetings in one or more books provided for that purpose;

(ii) see that all notices are duly given as required by the provisions of this plan of operation. In case of the secretary-treasurer's absence or refusal or neglect to give the required notice, such notice may be given at the direction of the chair of the board of directors, of the directors, or of the members upon whose request the meeting is called;

(iii) be custodian of the association's records;

(iv) keep a register of the post office address of each member;

(v) annually determine each member's participation in the association in the manner required by the Act and shall keep a register of each member's percentage of participation;

(vi) have the custody of all funds, securities, evidences of indebtedness, and other valuable documents of the association, the secretary-treasurer shall receive and give or cause to be given receipts and acquittances for monies paid in on account of the association and shall pay out of the funds on hand all just debts of the association of whatever nature upon maturity of the same, the secretary-treasurer shall enter or cause to be entered in the books of the association to be kept for that purpose full and accurate accounts of all monies received and paid out on account of the association, and whenever required by the board of directors, the secretary-treasurer shall keep or cause to be kept such other books as would show a true record of the reserves, expenses, losses, gains, assets, and liabilities of the association; and

(vii) in general, perform all duties incident to the office of secretary-treasurer and such other duties as from time to time may be delegated by the chair of the board of directors or by the board of directors.

(4) Legal Counsel.

(A) Types of Representation. The association may engage one or more attorneys to provide the following:

(i) legal representation, in matters other than disputes involving policyholder claims, before the Commissioner, the Department and the Texas Legislature;

(ii) legal representation in any dispute involving a policyholder claim against the association; and

(iii) legal advice and assistance relating to any other matter within the authority and responsibility of the association.

(B) Legal Representation, in Matters Other than Disputes Involving Policyholder Claims, Before the Commissioner, the Department and the Texas Legislature.

(i) Selection. The association board of directors shall select, in accordance with this plan of operation, legal counsel to provide legal representation on behalf of the association, in matters other than disputes involving policyholder claims, before the Commissioner, the Department and the Texas Legislature.

(ii) Qualifications.

(I) To be engaged to provide such legal representation, an attorney must:

(-a-) be licensed to practice law in Texas for at least five years;

(-b-) maintain professional liability insurance with an insurer authorized to do business in Texas in an amount of not less than \$1 million;

(-c-) be experienced in and practice in the areas of insurance and administrative law;

(-d-) have no impermissible conflict of interest before representation is undertaken, in accordance with the Texas Disciplinary Rules of Professional Conduct adopted by the Texas Supreme Court and the Comments prepared by the Model Rules Committee of the State Bar of Texas and amended by Supreme Court Order (Government Code, Title 2, Subtitle G, Appendix A, Article 10, §9) and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas; and

(-e-) have never been suspended or disbarred from the practice of law or convicted of a felony.

(II) The board of directors of the association may adopt additional qualifying criteria for legal counsel representing the association in matters specified in this subparagraph by amending this plan of operation.

(iii) Conflict of Interest.

(I) In representing the association pursuant to this subparagraph, legal counsel shall be governed by the conflict-of-interest and the-appearance-of-conflict-of-interest rules under the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas.

(II) A decision relating to a conflict of interest or appearance of a conflict of interest on the part of legal counsel under this subparagraph shall be based on the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas. No other laws or rules shall apply in determining the existence of conflict of interest or the appearance of conflict of interest under this plan of operation.

(III) Procedures for Handling Conflict of Interest Issues Raised by Legal Counsel.

(-a-) If legal counsel has reason to believe that legal counsel's representation of the association pursuant to this paragraph may result in a conflict of interest or the appearance of a conflict of interest, legal counsel shall immediately report, either verbally or in writing, such fact and the surrounding circumstances, including full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and any advantages involved, to the chair of the board and the general manager and either:

(-1-) withdraw from such representation; or

(-2-) if the legal counsel believes that there will be no materially adverse effect upon the association by

such representation, request the approval of the association board of directors for legal counsel to engage in such representation.

(-b-) After review of all disclosed facts relating to the potential conflict of interest or appearance of conflict of interest, if the board of directors approve legal counsel's request to continue representation in the matter reported and the legal counsel also believes that there will be no materially adverse effect upon the association by such representation, the legal counsel may continue such representation.

(-c-) The chair of the board and the general manager shall prepare the written decision of the board of directors as to continued representation or denial of continued representation in such matter together with the reasons for that decision and file the written decision with the association's official records and forward a copy of the decision to legal counsel.

(IV) Procedures for Handling Conflict of Interest Issues Raised by Persons Other than Legal Counsel.

(-a-) If a member of the association's board, the chair of the board, or the general manager believe that representation by legal counsel in any matter pursuant to this subparagraph may result in a conflict of interest or the appearance of a conflict of interest, such person shall report the perceived conflict of interest or appearance of a conflict of interest to the chair of the board.

(-b-) The chair of the board shall contact legal counsel and request a meeting or a telephone conference with the board of directors and legal counsel to discuss such perceived conflict.

(-c-) During such meeting or teleconference the board of directors shall determine, in accordance with the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, whether a conflict of interest or the appearance of a conflict of interest exists and following such meeting or teleconference, the board of directors shall adopt and issue a written decision.

(-1-) If the board of directors determine that no conflict of interest or appearance of conflict of interest exists, the written decision shall state the reasons for such decision and that the legal counsel may continue to represent the association in the particular matter.

(-2-) If the board of directors determine that a conflict of interest exists, the written decision shall state the reasons for such decision and state either that the legal counsel may not represent the association in the matter or that the board of directors consent to the representation by legal counsel and that legal counsel may represent the association in the matter so long as the legal counsel also believes that there will be no materially adverse effect upon the association by such representation.

(-d-) A written decision prepared under this subdivision shall be included in the official records of the association and a copy of the decision shall be forwarded to the legal counsel.

(iv) Review and Termination. The association's executive committee, together with the general manager of the association, shall review annually with the legal counsel the performance of such legal counsel and report their findings to the board of directors in executive session. Representation of the association by legal counsel may be terminated at any time by the board of directors.

(C) Legal Representation in Any Dispute Involving a Policyholder Claim Against the Association.

(i) Selection. The general manager of the association shall select, in accordance with this plan of operation, legal counsel to represent the association in handling disputes involving policyholder

claims against the association. Selection of legal counsel to represent the association in such disputes shall be made on a case-by-case basis.

(ii) Qualifications.

(I) To be engaged to provide such legal representation, an attorney must:

(-a-) be licensed to practice law in Texas for at least five years;

(-b-) maintain professional liability insurance with an insurer authorized to do business in Texas in an amount of not less than \$1 million;

(-c-) be experienced in the defense of claims against insurers;

(-d-) have no impermissible conflict of interest before representation is undertaken, in accordance with the Texas Disciplinary Rules of Professional Conduct adopted by the Texas Supreme Court and the Comments prepared by the Model Rules Committee of the State Bar of Texas and amended by Supreme Court Order (Government Code, Title 2, Subtitle G, Appendix A, Article 10, §9) and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas; and

(-e-) have never been suspended or disbarred from the practice of law or convicted of a felony.

(II) The board of directors of the association may adopt additional qualifying criteria for legal counsel representing the association in matters involving policyholder claims against the association by amending this plan of operation.

(iii) Conflict of Interest.

(I) In representing the association pursuant to this subparagraph, legal counsel shall be governed by the conflict-of-interest and the-appearance-of-conflict-of-interest rules under the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas.

(II) A decision relating to a conflict of interest or appearance of a conflict of interest on the part of legal counsel under this subparagraph shall be based on the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas. No other laws or rules shall apply in determining the existence of conflict of interest or the appearance of conflict of interest under this plan of operation.

(III) In determining whether legal counsel has a conflict of interest, as defined in the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, the general manager shall require the legal counsel to submit to the general manager in writing evidence that a thorough conflicts check has been conducted to assure that no conflict of interest exists. Such evidence of a conflicts check shall be maintained by the general manager in the association's records as confidential and not available for public inspection.

(IV) The general manager may approve, in accordance with Rule 1.06(c) of the Texas Disciplinary Rules of Professional Conduct and the official Comments to this rule and any related ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, an attorney to represent the association in a matter involving a policyholder claim against the association in which a potential conflict of interest may exist if:

(-a-) the attorney reasonably believes the representation of the association will not be materially adversely affected; and

(-b-) the general manager consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

(V) If legal counsel accepts an engagement from the association to represent it in a dispute involving a policyholder claim against the association and fails to disclose a conflict of interest, as required in this clause, such legal counsel shall be barred for a period of five years, from the date on which the conflict of interest is disclosed to the association, from representing the association as legal counsel in any dispute involving a policyholder claim against the association.

(iv) Review and Termination.

(I) The general manager shall report to the executive committee at each of its regular meetings all information relating to the selection of and the service of legal counsel in handling policyholder claims against the association.

(II) At the general manager's discretion or at the direction of the executive committee, the general manager shall discharge legal counsel from any matter involving a policyholder claim against the association on five days' written notice to the legal counsel.

(5) Fiscal year. The fiscal year of the association shall be the calendar year.

(6) Waiver of notice. Whenever any notice is required to be given to any member or director of the association under the provision of this section a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

(7) Protection of directors, members, officers, and employees. The association shall indemnify each former, present, and future director, member, officer, and employee of the association against, and each such director, member, officer, and employee shall be entitled without further act on his/her part of indemnity from the association for, all costs and expenses (including the amount of judgments and the amount of reasonable settlements made with a view to the curtailment of costs of litigation, other than amounts paid to the association itself) reasonably incurred by him/her in connection with or arising out of any action, suit, or proceeding in which he/she may be involved by reason of his/her being or having been a director, member, officer, or employee of the association or of any other association or company which he/she serves as a director, member, officer, or employee at the request of the association, whether or not he/she continues to be such director, member, officer, or employee at the time of incurring such costs or expenses; provided, however, that such indemnity shall not include any costs or expenses incurred by any such director, member, officer, or employee in respect of matters as to which he/she shall be finally adjudged in any such action, suit, or proceeding to be liable for willful misconduct in the performance of his/her duty as such director, member, officer, or employee, or in respect of any matter in which any settlement is effected in any amount in excess of the amount of expenses which might reasonably have been incurred by such director, member, officer, or employee had such litigation been conducted to a final conclusion; provided, further, that in no event shall anything herein contained be so construed as to protect, or to authorize the association to indemnify such director, member, officer, or employee against any liability to the association or to its members to which he/she would otherwise be subject by reason of his/her willful misfeasance or malfeasance, bad faith, dishonesty, gross negligence, or reckless disregard of the duties or re-



sponsibilities involved in the conduct of his/her office or employment as such director, member, officer, or employee. The foregoing right of indemnification shall inure to the benefit of the heirs, executors, or administrators of each such director, member, officer, or employee and shall be in addition to all other rights to which such director, member, officer, or employee may be entitled as a matter of law. This indemnification shall in no way indemnify a member of the association from participating in the writings, expenses, profits, and losses of the association in the manner set out in this plan of operation or the Act.

(8) Annual report. The secretary-treasurer shall file with the Department annually a statement which shall summarize the transactions, conditions, operation, and affairs of the association during the preceding calendar year at such times and covering such periods as may be designated by the Department. Such statement shall contain such matters and information as are prescribed by the Department and shall be in such form as required by the Department.

(c) Financial Operation of the Association.

(1) Collection, investment, and allocation of funds.

(A) Collection. The secretary-treasurer shall collect all of the premiums received by the association from the sale of catastrophe insurance, all assessments levied against the members, and all proceeds from the investment of funds.

(B) Investment. All funds collected by the association which are not otherwise required to be expended as provided in paragraph (3) of this subsection may be retained in a checking account or accounts in any bank or banks doing business in the State of Texas and/or may be invested only in the following:

(i) in interest-bearing time deposits or certificates of deposit in any bank or banks doing business in the State of Texas; and/or

(ii) in treasury notes of the government of the United States of America; and/or

(iii) in money market funds which invest exclusively in the bonds or other evidence of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; except, however:

(I) such money market funds may make loans to or purchases of the described bonds and other evidence of indebtedness from a solvent bank or securities broker, registered under the Securities Act of 1934, under an agreement (commonly called a "repurchase agreement") which provides for the purchase by the money market fund of the type of securities described and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the money market fund, provided that the total market value of such securities shall equal or exceed the amount of such loan or repurchase when it is made; and

(II) such loan collateral or securities purchased from any one bank or securities broker may not exceed the greater of 5.0% of the assets of the money market fund or 5.0% of the amount of capital, surplus, or individual profits of such bank or securities broker; and/or

(iv) in such other investments as may be proposed by the board of directors and approved by the Commissioner. The board of directors shall determine what portion of such funds shall be retained in a checking account or accounts and what portion of such reserve shall be invested in the investments listed in this subparagraph, as well as which specific investments, if any, shall be made.

(C) Allocation.

(i) Each year the association will prepare a statement of earnings by calendar year. All premiums written, commissions paid, unearned and earned premiums, loss and loss expenses paid and pending will be charged to the calendar year. All general expense and interest income received will be charged or credited to the current calendar year.

(ii) Each company will apply their participation percentage applicable to each calendar year.

(2) Assessment of members.

(A) Assessment. If the chair of the board of directors or any members of the board of directors determine that an assessment of the members is necessary, a special meeting of the board of directors shall be called to determine if the funds then available to the association are:

(i) of insufficient size to provide adequately for the operating expenses of the association for the remainder of the then existing fiscal year of the association (or if such special meeting is within 60 days of the end of the then fiscal year, the board of directors may also determine if the funds available to the association during the next fiscal year will be insufficient to adequately provide for the operating expenses of the association for the next succeeding fiscal year); and/or

(ii) of insufficient size to adequately provide for an existing catastrophe loss or losses. If the board of directors shall determine funds available to the association are of insufficient size under the provisions of this clause and/or clause (i) of this subparagraph, then it shall assess the members of the association in such amount as it shall deem reasonable and necessary to provide for such operating expense and/or such catastrophe loss or losses.

(B) Amount of assessment. The board of directors shall determine which members of the association shall participate in any assessment for operating expenses and/or catastrophe losses. This determination shall be computed on a calendar year basis. The designated members of the association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association as furnished to the association by the Department after review of annual statements, other reports, and required statistics; provided, however, that if at the time of such assessment the Department has not furnished to the association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the association from the last calendar year in which such information is available and, upon obtaining the necessary information from the Department, the association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe areas.

(i) Participation in the association for policies after January 1, 1988. Procedure for determining the percent of participation respecting association policies with inception dates on or after January 1, 1988, for members of the association reflecting credit for voluntary premiums written in the designated areas. (All premiums are for the most recent preceding calendar year ending December 31, as furnished by the Department.) Column 1(a): Statewide net direct premiums for extended coverage and other allied lines. Column 1(b): Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line. Column 1(c): Statewide net direct premi-

ums for homeowners and farm and ranch owners. Column 2: The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such percentage as may be determined in accordance with subsection (a)(2)(i)(III) of this section (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)). Column 3: Each company's percentage of the net direct premiums as described in Column 2, which is the basis for indicating normal required participation in the association prior to credits for voluntary writings in the designated areas. Column 4: Total windstorm and hail premiums in the designated areas (association premiums plus voluntary premiums). Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4). Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit shall be limited to company's normal quota. Column 7: Each company's maximum possible allocation after applying credits for voluntary writings (Column 5 minus Column 6). Negative allocation to be shown as zero. Column 8: Percentage participation of each member company in the association, prior to application of offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6. Column 9: Percentage participation of each member company in the association. Figure: 28 TAC §5.4001(c)(2)(B)(i)

(ii) The Department shall furnish to the association the amount of net direct premiums of each member company written on property in this state and the aggregate net direct premiums written on property in this state by all member companies during the preceding calendar year as reported by member companies to the Department. Within a reasonable time after the receipt of same from the Department, the association shall notify each member company, in writing, sent by certified mail, the amount of the net direct premiums written on property in this state during the preceding calendar year by the member company to whom notice is given, including the net direct premiums of similar insurance voluntarily written in the catastrophe areas, upon which such company's percentage of participation will be determined. Such notice shall state that such notification, and the content thereof, is an act, ruling, or decision of the association and that the member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice in accordance with the Insurance Code §2210.551. Thereafter, the association shall determine the percentage of participation for each member company in the manner provided in the plan of operation and shall notify each member company thereof, in writing, sent by certified mail. Such notice shall state that such notification, and the content thereof, is an act, ruling, or decision of the association insofar as the mathematical determination of the percentage of participation is concerned and that the member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice in accordance with the Insurance Code §2210.551.

(iii) To assist the association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14 Data) for the State of Texas that is filed annually with the Department as part of the insurer's Texas Fire and Casualty Annual Statement Form 2.

(C) Notice of assessment. Notice of assessment shall be sent to each member, within 30 days of the meeting of the board of directors at which such assessment was levied, by certified mail, return receipt requested, addressed to the office of such member as it appears on the books of the Association. Such notice shall state the member's allocated amount of assessment and shall inform each member of the

sanctions imposed by subparagraph (D) of this paragraph for the failure to pay such assessment within the time prescribed by this section. Such notice shall also state that such notification, and the content thereof, is an act, ruling, or decision of the association insofar as the amount of the assessment for such company is concerned and that a member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice, in accordance with the Insurance Code §2210.551; provided, however, that the right of appeal provided for herein shall not include the subject matter of any act, ruling, or decision of the association determining the amount of net direct premiums of such member company or the percentage of participation for such member company when notice of the amount of such net direct premiums or such percentage of participation has previously been given by the association in accordance with subparagraph (B)(ii) of this paragraph. The time period for an appeal of an act, ruling, or decision of the association respecting net direct premiums or percentage of participation is computed from the date of the act, ruling, or decision of the association respecting same.

(D) Failure to pay assessment.

(i) Each member shall remit to the association payment in full of its assessed amount of any assessment levied by the board of directors within 30 days of receipt of notice of assessment. If the association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the association shall report to the Commissioner the fact that such assessment has not been paid, and the Commissioner shall immediately issue an order suspending such member's certificate of authority to transact the business of insurance in the State of Texas until such time as the association certifies to the Commissioner that such assessment has been paid in full. Removal of a member's certificate of authority to transact business in the State of Texas by the Commissioner shall in no way affect the right of the association to proceed against such member in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect such member's assessment. In addition to any other remedy provided herein, the board of directors may offset assessments due from a member against any amounts in any account of such delinquent member.

(ii) A member by mailing payment of its allocated amount of assessment, as provided herein, shall not thereby waive any right it may have to contest the computation of its allocated amount of assessment. Such contest shall not, however, toll the time within which assessments shall be paid or the report to be made to the Commissioner or the action to be taken by the Commissioner upon receipt of such report, all as set out in clause (i) of this subparagraph.

(E) Inability to pay assessment by reason of insolvency. In the event a member of the association is placed in temporary or permanent receivership under order of a court of competent jurisdiction based upon a finding of insolvency, and such member has been designated an impaired insurer by the Commissioner, and in the event it is necessary to obtain additional funds to provide for operating expenses and losses in the year the insurer is declared impaired, the aggregate net amount not recovered from such insolvent insurer shall be reallocated among the remaining members of the association in accordance with the method of determining participation as determined in the plan of operation.

(3) Use of funds.

(A) All monies collected or received by the association are required to be expended in the following ways and in the following sequence:

(i) first, to pay the expenses and claims of the association and to pay premiums for reinsurance under any reinsurance program approved by the Commissioner;

(ii) second, to make payment of the net equity of association members on an annual basis, including all premium and other revenue of the association in excess of incurred losses and operating expenses, directly to the comptroller for deposit in the catastrophe reserve trust fund to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the Texas Department of Insurance.

(B) Funds are to be disbursed from the catastrophe reserve trust fund in accordance with §5.9903(c) of this title (relating to Operation of the Trust Fund). Funds disbursed from the catastrophe reserve trust fund may not be distributed to any member of the association for any purpose, and any funds disbursed to the association from the catastrophe reserve trust fund that remain unspent after payment of all losses and loss adjustment expenses arising out of an occurrence or series of occurrences shall be remitted to the comptroller for redeposit in the catastrophe reserve trust fund.

(d) Catastrophe Insurance.

(1) The policy.

(A) Approval. The association shall cause to be issued policies providing for catastrophe insurance and application forms therefor. The board of directors shall submit such policies and application forms to the Commissioner for approval. The Commissioner shall approve or reject such policies and application forms within 30 days of their submission. If the Commissioner takes no action regarding such forms and applications within such 30-day period, the forms and applications shall be deemed to have been approved by the Commissioner. The Commissioner shall not be required to approve or reject such forms and applications as a group--the Commissioner may approve some policies and/or forms and reject other policies and/or forms provided, however, that if the Commissioner rejects a form, the Commissioner shall send to the association the reasons for such rejection. No application for or policy of catastrophe insurance shall be used by the association prior to its approval by the Commissioner.

(B) Insurable property. The property eligible for catastrophe insurance shall be that property defined as "insurable property" in the Act, provided, however, that the term "insurable property" shall not include:

(i) motor vehicles; and

(ii) any structure consisting, in whole or in part, of a mobile home except as a mobile home may be described as being insurable property in this subsection.

(C) Limits of liability.

(i) The maximum limits of liability shall be determined by statute and set forth in the rules manual of the association adopted pursuant to §5.4501 of this title (relating to Rules and Regulations for Texas Catastrophe Property Insurance Association).

(ii) In the event that the value of any risk exceeds the maximum amounts set forth in the rules manual, the association may waive the coinsurance requirements and charge a rate on a negotiated basis in accordance with procedures subject to review by the Department.

(iii) Limits of liability for risks required to be insured by the association shall be adjusted for inflation as part of the annual hearing on property rates by the Commissioner to reflect any changes in the cost of construction or residential values in the catas-

trophe areas as determined by credible indexes. Indexing of liability limits shall apply after January 1, 1992.

(D) Rates, rating plans, and rate rules applicable. The rates, rating plans, and rate rules applicable shall be those established pursuant to the Act, §8.

(2) Applicant, acceptance, and rejection.

(A) Forms. Any person having an insurable interest in insurable property located in a catastrophe area shall be entitled to apply to the association for catastrophe insurance in the manner provided herein. All applications for catastrophe insurance shall be made on forms prescribed by the board of directors of the association and approved by the Commissioner as provided in paragraph (1)(A) of this subsection. Such application forms shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for insurance on the property. All applications shall be made on behalf of the applicant by a local recording agent.

(B) Local recording agent. Commissions to be paid to a licensed agent shall be a percentage of the premium produced as may be determined by the board of directors. In event of cancellation of a policy, or if an endorsement is issued which requires premiums to be returned to the insured, the agent shall refund ratable commission on the unearned portion of canceled liability and on reductions in premiums at the same rate at which commissions were originally paid.

(C) Submission. Application for catastrophe insurance shall be on the prescribed form and shall be accompanied by payment of the full amount of the premium and the inspection fee, if any.

(D) Inspection of the risk. The board of directors shall determine the manner and scope which risks are to be inspected prior to the issuance of a policy of catastrophe insurance. The board of directors may issue a policy of catastrophe insurance on certain types of risks without an inspection provided that the application is accompanied by such information as the board of directors may require. The board of directors shall prepare a set of regulations dealing with the inspection of risks. Such regulations shall be submitted to the Commissioner for approval. The Commissioner may reject all or any portion of such regulations within 10 days of the date of their submission. If the Commissioner shall fail to reject all or any part of such regulations within 30 days of the date of their submission, then such regulations shall be deemed to have been approved.

(E) Receipt of the application.

(i) After receipt of the application, the full amount of the premium (and inspection fee, if any) and any required inspection report, the association shall:

(I) cause a policy of catastrophe insurance to be issued; or

(II) advise the agent or applicant that the risk is not acceptable, but will be acceptable if improvements are made by the applicant (in which case the association shall promptly advise the agent or applicant what improvements should be made to the property to make it acceptable; when the association has been satisfied that such improvements have been made and any additional inspection fee, if any, has been paid, then the association shall cause to be issued a policy of catastrophe insurance); or

(III) advise the agent or applicant that the risk is not acceptable, and state the reasons therefore. The reasons for which a risk shall not be acceptable for catastrophe insurance are:

(-a-) the risk is not insurable property as such term is defined in the Act and this section;

(-b-) the amount of insurance requested is in excess of the limits of liability as set forth in this plan of operation or by law;

(-c-) the risk fails to meet reasonable underwriting standards. Reasonable underwriting standards shall include, but shall not be limited to:

(-1-) the amount of insurance requested, together with other insurance, is within relationship to the reasonable value (actual cash value or replacement cost value) of the property insured;

(-2-) the physical condition of the property, such as its construction, maintenance, or general deterioration;

(-3-) its present use or housekeeping;

(-4-) in violation of law, public policy, morals and the character or integrity of the property owner or occupant;

(-d-) such other reason as may be determined by the board of directors and approved by the Commissioner.

(ii) New or increased coverage will be effective on the date received by the association or effective on the date the application is mailed if sent by registered or certified mail, or by United States Postal Service Express Mail, or if sent by regular mail that is hand canceled by the United States Postal Service, or if sent by such other similar mailing procedure as approved by the board of directors, prior to the time specified in this clause as an exception, unless the application for new or increased coverage stipulates a later date. Renewal policies will be effective to provide continuous coverage if the request for a renewal is received on or before the expiration of the existing policy. Exception: no new or increased coverage applications will be accepted on the day (beginning at 12:01 A.M.) or after a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude, until the General Manager determines that the storm no longer threatens property within the designated catastrophe area of the Texas Windstorm Insurance Association. This exception does not apply to any new or increased coverage application that meets underwriting criteria that is submitted as follows: delivered in person to the Texas Windstorm Insurance Association's Austin office during its normal business hours prior to a windstorm designated as a hurricane by the United States Weather Bureau being in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude; or mailed prior to the first day that a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude by registered or certified mail or United States Postal Service Express Mail or regular mail that is hand-canceled by the United States Postal Service or such other mailing procedure as approved by the Board of Directors. Such applications will be accepted and become effective on the date delivered in person or mailed or a later date if stipulated on the applications. This exception also does not apply to any renewal policy affording windstorm coverage if the expiring policy was written by the Texas Windstorm Insurance Association and if the application for renewal was received by the Texas Windstorm Insurance Association on or before the expiration of the existing Texas Windstorm Insurance Association policy or if mailed by registered or certified mail or United States Postal Service Express Mail or by regular mail that is hand-canceled by the United States Postal Service, or if sent by such other similar mailing procedure as approved by the board of directors, prior to the expiration of the existing Texas Windstorm Insurance Association policy.

(3) Cancellation.

(A) By the association.

(i) The association shall not cancel a policy of catastrophe insurance issued under this section except for:

(I) nonpayment of premium; or

(II) evidence of fraud or material misrepresentation; or

(III) cause which would have been grounds for nonacceptance of the risk under this plan of operation had such cause been known to the association at the time the policy was issued; or

(IV) any cause arising subsequent to the issuance of the policy which would have been grounds for nonacceptance of the risk under this plan of operation had such cause existed at the time of acceptance.

(ii) Upon cancellation of a policy of catastrophe insurance issued under this paragraph, the association shall send to the insured notice of cancellation together with a statement of the reason therefor and a statement of the reason the insured has the right to appeal as hereinafter provided. Upon cancellation of a policy of catastrophe insurance by the association, the association shall refund to the insured the excess of paid premium according to the standard pro rata table.

(B) By the insured.

(i) A policy of catastrophe insurance may be canceled at any time:

(I) by the insured upon demand and surrender of the policy; or

(II) by an agent, or some other person, firm, or corporation if such agent, person, firm, or corporation shall finance the payment of all or a portion of the premium of such policy and there is a balance due for the financing of such premium and such balance, or any portion thereof is not paid within ten days after the due date, and such agent, person, firm, or corporation to whom such balance is due has:

(-a-) requested cancellation of the policy and returned the policy with proof that the insured was notified of such return; or

(-b-) requested the association to cancel such policy by notice mailed to the insured and any others shown in the policy as having an insurable interest in the policy, in which case the association shall refund the excess of paid premium according to the standard short rate table.

(ii) A policy of catastrophe insurance may be reduced at any time in which case the association shall, upon demand, refund the excess of paid premium according to the standard short rate table.

(4) Payment of claims.

(A) Report of loss. All losses shall be reported by agents to the association in the manner prescribed by the board of directors.

(B) Adjustment of loss. All losses shall be adjusted in the manner designated by the board of directors. The assignment of losses shall be on an equitable basis to qualified insurance adjusters at such fee as shall be determined by the board of directors.

(C) Payment of losses. After report of the loss in the manner specified by the board and the adjustment of the loss as provided for herein, the association shall remit to the insured any sums

owing to the insured in the manner specified in the catastrophe insurance policy, or in the absence of such specification, in the manner specified by the board of directors.

(D) Notice of appeal.

(i) The association shall, immediately upon total or partial denial of a claim of any person insured pursuant to the Insurance Code, Article 21.49, give written notice by certified mail, return receipt requested, to such person of the right to appeal such total or partial denial under the Insurance Code, Article 21.49, §9 and/or §9A. An offer of less than the amount claimed on the claimant's proof of loss is considered a partial or total denial of a claim. The notice must, at a minimum, contain the following information placed in a prominent position:

(I) a clear, accurate, and complete description and statement of the partial or total denial of the claim;

(II) a statement that the person has the right to appeal the association's determination either to the Commissioner under the Insurance Code, Article 21.49, §9; or bring an action against the association in the county in which the covered property is located or in a district court of Travis County under the Insurance Code, Article 21.49, §9A. A person may not proceed under both the Insurance Code, §9 and §9A, for the same determination by the association;

(III) a statement that, under applicable law, an aggrieved person who chooses to appeal to the Commissioner must make a written request to the Commissioner within 30 days after such determination of the association;

(IV) a statement of the date of such determination;

(V) a statement that a person who files a written notice of appeal to the Commissioner is entitled to a hearing in either the county in which the covered property is located or in Travis County; and

(VI) language which describes the time limit for filing an appeal as specified in clause (ii) of this subparagraph.

(ii) An act, ruling, or decision of the association is deemed to be timely filed with the Commissioner if an appeal is sent to the chief clerk of the Department by first-class or by certified or registered United States mail in an envelope or wrapper properly addressed and stamped and deposited in the mail one day or more before the last day for filing the appeal, if the appeal is received by the chief clerk's office not more than ten days subsequent to the due date for filing.

(e) Mobile Homes.

(1) General provisions. The terms, conditions, and underwriting requirements set forth in this subsection apply to the Texas special mobile home windstorm and hail insurance policy covering all mobile homes which may be insurable property as described in this subsection, located in the designated catastrophe areas and written by the Texas Catastrophe Property Insurance Association. In the event of a conflict in the provisions of this subsection and subsections (a) - (e) of this section, the terms and conditions and underwriting requirements set forth herein in this subsection as relating to mobile homes shall be, in all respects, controlling; otherwise the provisions of subsections (a) - (e) of this section remain in full force and effect.

(2) Insurable property. The property eligible for catastrophe insurance under this subsection shall be that property defined as "insurable property" in the Act, provided, however, that the term "insurable property" shall not include motor vehicles or any structure consisting, in whole or in part, of a mobile home unless the same is a struc-

ture, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, and which is physically attached to the land, immovable, and is constructed, blocked, supported, anchored, secured, and installed in accordance with the underwriting requirements set forth in paragraph (3)(C) and (E) of this subsection.

(3) Underwriting requirements. In order for a mobile home to be insured by the association, it must meet the following underwriting requirements:

(A) The property eligible for catastrophe insurance shall be that property defined as "insurable property" in the Act, provided, however, that the term "insurable property" shall not include motor vehicles or any structure consisting, in whole or in part, of a mobile home unless the same is a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, and which is physically attached to the land, immovable, and is constructed, blocked, supported, anchored, secured, and installed in accordance with the underwriting requirements set forth in subparagraphs (C) and (E) of this paragraph.

(B) Each mobile home shall meet the following reasonable underwriting standards which shall include, but shall not be limited to:

(i) the amount of insurance requested, together with other insurance is within reasonable relationship to the actual cash value of the property involved;

(ii) consideration of the physical condition of the property, such as its construction, maintenance, or general deterioration;

(iii) consideration of its present use or housekeeping;

(iv) whether its use is in violation of law, public policy and morals,

(v) and the consideration of the character or integrity of the property owner or occupant.

(C) Each mobile home manufactured after December 31, 1975, shall be designed for location in or as though destined for the catastrophe area where wind records are hereby found to indicate wind forces of 125 miles per hour, or greater, and shall be constructed in accordance with such design as set forth in either the Texas Mobile Homes Standards Code adopted by the Texas Department of Labor and Standards pursuant to the provisions of Texas Civil Statutes, Article 5221f, or the Mobile Home Construction and Safety Standards established under the Housing and Community Development Act of 1974, Title VI, titled The National Mobile Home Construction and Safety Standards Act of 1974 (42 United States Code §5401, et seq.) as may be appropriate under Texas Civil Statutes, Article 5221f, §5.

(D) Each mobile home described in subparagraph (C) of this paragraph or sold by a dealer, as that term is defined in Texas Civil Statutes, Article 5221f, after August 31, 1975, shall bear a seal of approval issued by the Texas Department of Labor and Standards.

(E) Each mobile home shall be blocked, anchored, and secured, and an appropriate support, and anchoring systems shall be

installed as will resist overturning and lateral movement (sliding) of the mobile home in the manner and in accordance with the Texas Mobile Home Standards Code adopted by the Texas Department of Labor and Standards pursuant to the provisions of Texas Civil Statutes, Article 5221f, or the Mobile Home Construction Safety Standards established under the Housing and Community Development Act of 1974, Title VI, titled The National Mobile Home Construction and Safety Standards Act of 1974 (42 United States Code §5401, et seq.) for mobile homes located in the catastrophe area, as may be appropriate under Texas Civil Statutes, Article 5221f, §5.

(F) Coverage shall not be provided for loss or damage to:

- (i) awnings, carports, and patio covers, whether permanently attached or not;
- (ii) outdoor radio or television antennas including their lead-in wiring, masts, or towers;
- (iii) fences;
- (iv) seawalls, property line, and similar walls;
- (v) greenhouses, hot houses, slat houses, trellises, pergolas, or cabanas;
- (vi) wharfs, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the property therein or thereon;
- (vii) lawns, trees, shrubs, or plants;
- (viii) patio covers, screening, and supports enclosing or partially enclosing pools, patios, or other areas, whether a separate structure or attached to a building (however, with reference to this exclusion, nothing therein shall be construed to exclude loss to screening and supports of porches which are a part of a building);
- (ix) paint or waterproofing material applied to the exterior of the buildings or structures covered hereunder.

(G) This association shall not be liable for loss or damage caused by:

- (i) blizzard or change in temperature;
- (ii) sand or dust;
- (iii) snowstorm;
- (iv) tidal wave;
- (v) high water, or overflow, whether driven by wind or not; nor
- (vi) for any loss or damage caused by rain, whether driven by wind or not, unless the wind or hail shall first make an opening in the walls or roof of the described building, and shall then be liable only for loss to the interior of the building, or the insured property therein, caused immediately by rain entering the building through such openings. This association shall not be liable under this coverage for damage caused by ensuing fire.

(H) The liability of the association for loss or damage to a mobile home shall:

- (i) not exceed the lowest of:
  - (I) the difference between the actual cash value of the insured property immediately before the loss and its actual cash value immediately after the loss; or
  - (II) the cost of repairing the damage; or

(III) the actual cash value of the insured property immediately preceding the loss; or

(IV) the cost of replacing the insured property; or

(V) the limit of liability stated in the declarations; and the liability thus determined shall, in addition, be subject to any deductible amount stipulated in the policy;

(ii) in any loss involving part of a pair, set, or series of objects, pieces, or panels (whether interior or exterior), be determined by reference to:

(I) a fair and reasonable proportion of the part of the total value of the pair, set, or series; or

(II) the reasonable cost of repairing or replacing the damaged part so as to match the remainder as closely as reasonably possible under the circumstances; or

(III) the reasonable cost of providing a reasonably acceptable alternative decorative effect or utilization, as the circumstances may warrant. The association does not guarantee the availability of parts or replacements and shall not, in the event of such damage to or loss of a part, be obligated for the value of, or to repair or replace, the entire pair, set, or series.

(I) The association shall not be liable on any one loss with respect to personal effects for more than \$250 on money, coin collections, or other numismatic property and paraphernalia; gold bullion; silver bullion; passports; airline, railroad, and other tickets; securities; manuscripts, stamps or other philatelic property and paraphernalia; any one article of jewelry including, but without being limited to, watches, necklaces, bracelets, gems, precious and semiprecious stones, and articles of gold and platinum; art, including, but without being limited to, paintings, sculptures, drawings, etchings, ceramics, and china; heirlooms; furs, including any article containing fur which represents its principal value; or guns.

(J) No forms may be used to provide catastrophe insurance for a mobile home risk unless such form has been specifically approved by the Commissioner for use in insuring mobile homes risks by the association.

(K) Catastrophe insurance shall not provide insurance coverage for any one insurable risk in excess of \$84,000 on the mobile home and on household goods contained therein, which shall include all personal property usual to a residence of the insured and the insured's family.

(L) The limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area. Such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5.101 of the Insurance Code.

#### (4) Application.

(A) The legislature of the State of Texas has declared that an adequate market for windstorm, hail, and fire insurance for insurable property, which is immovable property at fixed locations, is necessary to the economic welfare of the State of Texas and has further declared that mobile homes have become a primary housing resource of many of the citizens of the state.

(B) An applicant for catastrophe insurance shall apply to the association for a policy of insurance, and such application shall contain a declaration to the effect that the mobile home is physically attached to the land, immovable, and such application shall be accompanied by the following:

(i) a certificate of inspection applicable to mobile homes manufactured after December 31, 1975, to the effect that such mobile home has been constructed in accordance with the underwriting requirements set forth in paragraph (3)(C) of this subsection. Such certificate of inspection may be made by the manufacturer of such mobile homes, by the terms of which the construction of such mobile home is warranted to be in accordance with the underwriting requirements set out in paragraph (3)(C) of this subsection. The association may rely upon such warranty in the issuance of a policy of catastrophe insurance. This warranty is made by the manufacturer, and not the policyholder. The certificate of inspection with reference to such mobile home may be made by the Texas Department of Labor and Standards or by such inspector as may be appointed or approved by it, or by an inspector designated by the association. Appropriate evidence satisfactory to the association of the issuance of a seal of approval by the Texas Department of Labor and Standards issued pursuant to the provisions of Texas Civil Statutes, Article 5221f, may, at the option of the association, satisfy the requirements of this paragraph; and

(ii) a certificate or other appropriate evidence required by the association evidencing the issuance of a seal of approval by the Texas Department of Labor and Standards issued pursuant to Texas Civil Statutes, Article 5221f, §8(b), as to mobile homes manufactured prior to January 1, 1976, and sold by a dealer, as that term is defined in Texas Civil Statutes, Article 5221f, subsequent to August 31, 1975;

(iii) a certificate of inspection to the effect that such mobile home has been properly blocked, supported, anchored, secured, and installed as required by paragraph (3)(E) of this subsection. Such certificate of inspection may be made by an installer as that term is defined in Texas Civil Statutes, Article 5221f, by a certificate addressed to the association, by the terms of which the blocking, supporting, anchoring, securing and installing of such mobile home is warranted to be in accordance with such underwriting standard. The association may rely upon such warranty in the issuance of a policy of catastrophe insurance, or the certificate of inspection may be made by an inspector designated by the association. The warranty referred to herein is made by the installer and not the policyholder;

(iv) in the event an inspector is designated by the association for any of the purposes set forth herein, the person applying for catastrophe insurance shall pay a reasonable fee to the association for each such inspection. The reasonableness of the fee shall be subject to review by the commissioner.

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

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Texas Department of Insurance

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For further information, please call: (512) 463-6327



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

### CHAPTER 151. GENERAL PROVISIONS

#### 37 TAC §151.21

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §151.21, concerning Weapons Policy, without changes as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4657) and will not be republished.

The proposed amendments are necessary to add clarity.

No comments were received.

The amendments are adopted under Texas Penal Code, §§38.11, 46.03 and 46.035.

Cross Reference to Statutes: Texas Government Code, §492.013.

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

Filed with the Office of the Secretary of State on August 14, 2008.

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Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



#### 37 TAC §151.73

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §151.73, concerning Texas Board of Criminal Justice Vehicle Assignments, without changes as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4658) and will not be republished.

The amendments are necessary to conform to state law and to prohibit the transportation of employee pets.

No comments were received.

The amendments are adopted under Texas Government Code §§2113.013, 2101.0115 and 2171.1045.

Cross Reference to Statutes: Texas Government Code, §492.013 and §2203.001.

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CHAPTER 152. CORRECTIONAL  
INSTITUTIONS DIVISION  
SUBCHAPTER D. OTHER RULES

**37 TAC §152.61**

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §152.61, concerning Emergency Response to Municipal, County, State or Federal Law Enforcement Agencies and Non-Agent Private Prisons/Jails, without changes as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4659) and will not be republished.

The amendments are necessary to conform to state law.

No comments were received.

The amendments are adopted under Texas Government Code §494.008.

Cross Reference to Statutes: Texas Government Code, §492.013.

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

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

**CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§19.101, 19.1210, 19.1911, 19.1926, 19.2302, 19.2326, 19.2500, and 19.2609; adopts new §§19.2401, 19.2403, 19.2407, 19.2413, 19.2611, and 19.2615; and adopts the repeal of §§19.1212, 19.2402 - 19.2404, 19.2407 - 19.2410, and 19.2413 in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. The amendments to §§19.101, 19.2302, and 19.2500 are adopted with changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3170). The amendments to §§19.1210, 19.1911, 19.1926, 19.2326, and 19.2609; new §§19.2401, 19.2403, 19.2407, 19.2413, 19.2611, and 19.2615; and the repeal of §§19.1212, 19.2402 - 19.2404,

19.2407 - 19.2410, and 19.2413 are adopted without changes to the proposed text.

The amendments, new sections, and repeal are adopted to implement rule changes necessitated by a project under the direction of HHSC that replaces the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 *et seq.*, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As a result, DADS is replacing its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with the federal MDS assessment for making medical necessity determinations and calculating the RUG.

The amendments are also adopted to update agency names, correct rule cross-references, and update statutory citations.

The amendment to §19.101 is changed to add the definitions for "Family council" and "Resident group" in order to ensure that the definitions section is consistent with an amendment to the same section published in the January 18, 2008, issue of the *Texas Register*.

A minor change was made to the text of §19.2500 to clarify and improve the accuracy of the section.

Two minor editorial changes were made to the text of §19.2302 to clarify and improve the accuracy of the section. The changes update a reference to 1 TAC §371.212 and delete a reference to 1 TAC §371.213, which is being repealed by HHSC.

DADS received written comments from the Geriatric Associates of America, PA, the Coalition for Nurses in Advanced Practice, the Texas Association of Residential Care Communities, and one individual. A summary of the comments and the responses follow.

Comment: Concerning §19.101(15), one commenter recommended deleting "consistent with" and adding "considering" in regard to the preferences of the resident in the definition for care and treatment.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible. The suggested change to §19.101(15) is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.101(20), one commenter recommended that "an RN" be deleted and replaced with "licensed nurse" for the purpose of signing that an MDS assessment is complete.

Response: The agency has determined this change to §19.101(20) is not appropriate because §19.801(9)(A) states that for MDS assessments, "(9) Certification. (A) A registered nurse must sign and certify that the assessment is completed" and because 42 CFR §483.20(i)(1) states that for MDS as-



assessments, "(i) Certification. (1) A registered nurse must sign and certify that the assessment is completed." Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.101(68), one commenter recommended that "registered nurse" be deleted and replaced with "licensed nurse" for the definition for MDS nurse reviewer.

Response: The agency has determined this change to §19.101(68) is not appropriate as the Health and Human Services Office of Inspector General is employing registered nurses to monitor the accuracy of the MDS assessment submitted by Medicaid-certified nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Two commenters requested the Medicaid Nursing Facility rules be updated to be consistent with current practice of advanced practice nurses (APNs) in nursing facilities. Concerning §19.101(84), one of the commenters recommended that clinical nurse specialist be included in the definition of nurse practitioner because the commenter is concerned the current definition may be interpreted to exclude other types of advanced practice nurses.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible. The suggested change to §19.101(84) is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.101(100), one commenter recommended that "physician, dentist, or podiatrist," be replaced with "practitioner" in the definition of pharmacist.

Response: The agency believes that references to delegation should be revised throughout the chapter rather than just the sections affected by the TILES to RUGs transition. Therefore, the agency declines to make the suggested change at this time.

Comment: Concerning §19.101(111), one commenter recommended deleting "rectify substandard care and deficient facility practice" and replacing it with "enhance care and facility practice" regarding the quality assessment and assurance committee.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible. The suggested change to §19.101(111) is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.101(138), one commenter recommended that "provides general supervision of" be deleted and replaced with "delegates prescriptive authority" in the definition of "supervising physician," with regard to a nurse practitioner providing services in the nursing facility.

Response: The agency believes that references to delegation should be revised throughout the chapter rather than just the sections affected by the TILES to RUGs transition. Therefore, the agency declines to make the suggested change at this time.

Comment: Concerning §19.1210, one commenter recommended that this rule be revised to allow a nurse practitioner and a clinical nurse specialist to certify and recertify the need for nursing facility care in addition to the physician.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible. The suggested change to §19.1210 is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.1911(b)(8), one commenter recommended that "physician" be deleted and replaced with "medical" because nursing facilities create policies that only physicians may write discharge summaries.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible. The suggested change to §19.1911(b)(8) is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.1911(b)(11), one commenter recommended that "physician" be deleted and replaced with "practitioner" with regard to signed and dated orders.

Response: The agency believes that references to delegation should be revised throughout the chapter rather than just the sections affected by the TILES to RUGs transition. Therefore, the agency declines to make the suggested change at this time.

Comment: Concerning §19.1911(b)(13)(vi), one commenter recommended that "physician" be deleted and replaced with "practitioner" with regard to orders for snacks for dietary intake.

Response: The agency believes that references to delegation should be revised throughout the chapter rather than just the sections affected by the TILES to RUGs transition. Therefore, the agency declines to make the suggested change at this time.

Comment: Concerning §19.2401(2)(A), one commenter recommended that "nurse practitioner" be added to allow a nurse practitioner to order medical and nursing services needed to verify medical necessity.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible.

sible. The suggested change to §19.2401(2)(A) is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.2500(a)(15), one commenter recommended adding language to more clearly specify "licensed" registered nurses or licensed vocational nurses are included in the definition of medical staff in addition to staff licensed to practice medicine.

Response: The purpose of the amendments to the rules is to implement the change from TILES to RUGs. Other changes would require additional time to review to determine the impact on the entire chapter and possibly to provide opportunity for input from other interested parties. While the suggested changes may be appropriate to consider at a later date, DADS believes it is necessary to implement the TILES to RUGs change as soon as possible. The suggested change to §19.2500(a)(15) is outside the scope of the changes being made to implement the TILES to RUGs transition in Medicaid nursing facilities. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.2407(a), one commenter recommended adding the "applicant or recipient and the applicant's or recipient's responsible party" in addition to the attending physician and the nursing facility when a determination is made to deny medical necessity and provide an opportunity to present additional information about the applicant's or recipient's medical need for nursing facility care.

Response: The agency has determined this change to §19.2407(a) is not required because the notification of the attending physician is to allow the attending physician to supply more information about the applicant's or recipient's medical need for nursing facility care. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.2407(a)(1), one commenter recommended adding "subject to right of the applicant, applicant's responsible party, recipient, or recipient's responsible party, to request a fair hearing."

Response: The agency has determined this change to §19.2407(a)(1) is not required because §19.2407(b) and (c) describe what the applicant or responsible party, or recipient or responsible party, must do to request a fair hearing. Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.2407(a)(2), one commenter recommended adding "applicant, applicant's responsible party, recipient, or recipient's responsible party" in addition to the attending physician and nursing facility physician for the purpose of contesting the finding of the state Medicaid claims administrator. Additionally, the commenter recommended adding "subject to right of the applicant, applicant's responsible party, recipient, or recipient's responsible party, to request a fair hearing" to the state Medicaid claims administrator making a final determination that the applicant or recipient's admission or stay is not medically necessary.

Response: The agency has determined this change to §19.2407(a)(2) is not required because §19.2407(b) and (c) describe what the applicant or responsible party, or recipient or responsible party, must do to request a fair hearing. Therefore, the agency declines to make the change at this time.

Comment: Concerning 40 TAC §19.2413(f), one commenter recommended adding "within 31 days" for MDS assessments not on time and "without penalty" when payment resumes.

Response: The agency has determined that the rule is clear that a calculated rate is paid if the MDS assessment is received within the federal MDS submission schedule. DADS does not believe that "without penalty" is necessary because no penalty is applied to the payment. Therefore, the agency declines to make the change at this time.

Comment: Concerning 40 TAC §19.2413(g), one commenter recommended adding "On time assessments and missed assessments are not the same" and "over 92 days" to clarify that it is a missed assessment received by the state Medicaid claims administrator.

Response: The agency has determined that adding "On time assessments and missed assessments are not the same" and "over 92 days" is not appropriate because On-time MDS assessment is defined at §19.2413(a)(2) and Missed MDS assessment is defined at §19.2413(a)(3). Therefore, the agency declines to make the change at this time.

Comment: Concerning §19.2413(i), one commenter recommended adding "due to an abbreviated stay where a RUG cannot be established" regarding DADS payment of a default rate for an MDS assessment that is incomplete or has errors.

Response: The agency has determined that adding "due to an abbreviated stay where a RUG cannot be established" is not appropriate because any MDS assessment that does not provide a calculated RUG does not provide the information regarding which RUG rate DADS will pay. For an MDS assessment that is incomplete or has errors, resulting in that MDS assessment not calculating a RUG, DADS will pay a default rate if all conditions of eligibility are met. In this situation, the nursing facility must submit a significant correction that provides the necessary information to calculate a RUG and allows DADS to pay a RUG rate other than the default rate.

## SUBCHAPTER B. DEFINITIONS

### 40 TAC §19.101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

#### §19.101. Definitions.

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

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action

which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse"--Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse"--The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this title (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) CFR--Code of Federal Regulations.

(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, di-

rect, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

- (A) assessment of the resident's health care status;
- (B) planning for the resident's care;
- (C) assignment of duties to achieve the resident's care;
- (D) nursing intervention; and
- (E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A)-(C) of this definition. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention

(37) Exploitation--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(38) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(39) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a)-(d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this title (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(40) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(41) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(42) Fiduciary agent--An individual who holds in trust another's monies.

(43) Free choice--Unrestricted right to choose a qualified provider of services.

(44) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(45) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(46) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(47) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(48) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(49) HIV--Human Immunodeficiency Virus.

(50) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(51) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(52) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(53) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(54) IV--Intravenous.

(55) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(56) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(57) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(58) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(59) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and

Structures, Standard 101, of the National Fire Protection Association (NFPA).

(60) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(61) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this title (relating to Advance Directives)).

(62) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(63) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Health and Safety Code, §121.021.

(64) Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(65) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(66) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(67) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(68) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(69) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(70) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(71) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(72) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(73) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(74) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapacitated.

(75) Medical-social care plan--See Interdisciplinary Care Plan.

(76) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(77) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(78) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(79) Neglect--A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(80) NHIC--Formerly, this term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(81) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(82) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(83) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(84) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(85) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(86) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(87) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to

licensure under Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(88) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(89) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(90) Objectives--See definition of "goals."

(91) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(92) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(93) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(94) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(95) PASARR--Preadmission Screening and Resident Review.

(96) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(97) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(98) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(99) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(100) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(101) Physical restraint--See Restraints (physical).

(102) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(103) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(104) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(105) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(106) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(107) PRN (pro re nata)--As needed.

(108) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(109) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(110) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(111) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(112) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(113) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(114) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(115) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(116) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(117) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(118) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(119) Resident--Any individual residing in a nursing facility.

(120) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPs).

(121) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(122) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(123) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(124) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(125) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(126) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(127) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(128) Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(129) Secretary--Secretary of the U.S. Department of Health and Human Services.

(130) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(131) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(132) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(133) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(134) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(135) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(136) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(137) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(138) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(139) Supervision--General supervision, unless otherwise identified.

(140) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(141) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(142) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(144) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(145) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(146) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(147) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(148) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(149) Title XVIII--Medicare provisions of the Social Security Act.

(150) Title XIX--Medicaid provisions of the Social Security Act.

(151) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.



(152) UAR--HHSC's Utilization and Assessment Review Section.

(153) Uniform data set--See Resident Assessment Instrument (RAI).

(154) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(155) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(156) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

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## SUBCHAPTER M. PHYSICIAN SERVICES

### 40 TAC §19.1210

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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### 40 TAC §19.1212

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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## SUBCHAPTER T. ADMINISTRATION

### 40 TAC §19.1911, §19.1926

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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## SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

### 40 TAC §19.2302, §19.2326

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

#### §19.2302. *Requirements for a Contracted Medicaid Facility.*

(a) This section applies to nursing facilities (NFs) that have been licensed and certified as eligible for participation under Title XIX.

(b) Each nursing facility (NF) must comply with the state requirements for participation and the facility's contract on a continuing basis.

(c) Each NF must comply with the Texas Health and Human Services Commission's (HHSC's) utilization review requirements as provided in 1 TAC §371.212 (relating to Minimum Data Set Assessments) and §371.214 (relating to Resource Utilization Group Classification System).

(d) A facility may not participate in the Texas Medical Assistance Program if it has restrictive policies or practices, including:

- (1) requiring the resident to make a will, with the facility named as legatee or devisee;
- (2) requiring the resident to assign his life insurance to the facility;
- (3) requiring the resident to transfer property to the facility;
- (4) requiring the resident to pay a lump sum entrance fee or make any other payment or concession to the facility beyond the recognized rate for board, room, and care as a condition for entry, departure, or continued stay;

(5) controlling or restricting the resident, the resident's guardian, or responsible party in the use of the resident's personal needs allowance;

(6) restricting the resident from leaving the facility at will except as provided by state law;

(7) restricting the resident from applying for Medicaid for a specified period of time;

(8) denying appropriate care to an individual on the basis of his race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(9) preventing terminally ill adult residents from exercising their will in making written or unwritten directives to reject life-sustaining procedures.

(e) If DADS has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX resident, any member of his family, or any other source for supplementation or for any item except as allowed within DADS policies and regulations.

(f) If DADS suspends a facility's vendor payments or proposes to terminate a facility's contract, the facility may request an administrative hearing to challenge the action. If a facility requests a hearing, the facility must make the request in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I.

(g) DADS' interpretations of the requirements for participation or the contract may not be appealed to HHSC's hearings department unless the interpretation has caused an adverse action for the facility.

(h) Facilities must allow representatives of DADS, the Medicaid Fraud Control Unit, and the Department of Health and Human Services to enter the premises at any time to make inspections or to privately interview the residents receiving assistance from DADS.

(i) Facilities must supply DADS complete information according to federal and state requirements about the identity of:

(1) each person who directly or indirectly owns interest of 5% or more in the facility;

(2) each owner (in whole or in part) of any property, assets, mortgage, deed of trust, note, or other obligation secured by the facility;

(3) each officer and director, if the facility is organized as a corporation;

(4) each partner, if the facility is organized as a partnership (A copy of the partnership agreement is required, but the dollar amount of capital contributions of the partners may be omitted); and

(5) any director, officer, agency, or managing employee of the institution, agency, or organization, who has ever been convicted of a criminal offense related to the person's involvement in programs established by Title XVIII, XIX, and XX (Effective dates for disclosure of any convictions are July 1, 1966, for Medicare, and January 1, 1969, for Medicaid.)

(j) If a profit-making corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between DADS and the corporation; and

(4) any management contract for the facility. If no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, the president and secretary of the corporation should state this on the department form.

(k) If a nonprofit corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts with DADS; and

(4) a copy of any management contract for the facility.

(l) Facilities other than those described in subsections (j) and (k) of this section must furnish a copy of:

(1) charter or other legal basis for the organization which owns the facility;

(2) any management contract or agreement for the facility;

(3) by-laws of the organization (if applicable); and

(4) other information required by DADS to determine the status of the legal entity that owns the facility.

(m) Facilities must disclose business transaction information. A facility must send to DADS, within 35 days after the date of a written request, complete information on:

(1) the ownership of a subcontractor with whom the facility has had, during the previous 12 months, business transactions totaling more than \$25,000; and

(2) any business transactions between the facility and any wholly owned supplier, or between the facility and any subcontractor during the five-year period ending on the date of the request.

(n) The facility must report changes in the required information promptly to DADS.

(o) Failure to provide this information may result in suspension, termination, or other contract action, including holding vendor funds. Payment to the facility is denied beginning on the day after the date information was due, and ending on the day before the date the information is received by DADS.

(p) Each facility must comply with Government Code, §531.116. A facility that furnishes services under the Medicaid program is subject to Occupations Code, Chapter 102. The facility's compliance with that chapter is a condition of the facility's eligibility to participate as a facility under those programs.

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**SUBCHAPTER Y. MEDICAL NECESSITY  
DETERMINATIONS**

**40 TAC §§19.2401, 19.2403, 19.2407, 19.2413**

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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**SUBCHAPTER Y. MEDICAL REVIEW AND  
RE-EVALUATION**

**40 TAC §§19.2402 - 19.2404, 19.2407 - 19.2410, 19.2413**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health

and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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 August 12, 2008.

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General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER Z. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)

### 40 TAC §19.2500

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

§19.2500. *Preadmission Screening and Resident Review (PASARR).*

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) Acute inpatient care--An acute institutional setting that provides medical care, such as a hospital, but does not include inpatient psychiatric care.

(2) Alzheimer's disease--A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(3) Amyotrophic lateral sclerosis--A degenerative motor neuron disease as diagnosed by a physician in accordance with International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(4) Anencephaly--A developmental anomaly with absence of neural tissue in the cranium.

(5) Chronic obstructive pulmonary disease--A disease of the respiratory system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(6) Comatose--A state of unconsciousness characterized by the inability to respond to sensory stimuli as certified by a physician.

(7) Congestive heart failure--A disease of the circulatory system as diagnosed by a physician in accordance with International Classification of Diseases, 9th Revision Clinical Modification (ICD-9-CM).

(8) Convalescent care--Care provided after a person's release from an acute care hospital that is part of a medically prescribed period of recovery which does not exceed 120 days.

(9) Dementia--A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th revision Clinical Modification (ICD-9-CM).

(10) Functioning at the brain stem level--A significantly impaired state of consciousness characterized by normal respirations and minimal (mostly reflexive) response to environmental stimuli as certified by a physician.

(11) Huntington's disease--A disease of the central nervous system diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(12) Legal representative--The parent of a minor child, the legal guardian, or the surrogate decision maker of the applicant or the resident of a nursing facility.

(13) Level I--identification screening--The process of identifying individuals with an indication of mental illness, mental retardation and/or a related condition, who require a Level II PASARR assessment.

(14) Level II--PASARR assessment--Preadmission Screening and Resident Review assessment of persons with mental illness, mental retardation, and/or a related condition conducted in accordance with 42 United States Code Annotated, §1396r.

(15) Medical staff--Any staff licensed to practice medicine, such as a physician, registered nurse, or a licensed vocational nurse.

(16) Mental illness--A mental disorder is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate for the individual's developmental stage. The individual typically has at least one of the following characteristics on a continuing or intermittent basis: serious difficulty in the areas of interpersonal functioning; and/or concentration, persistence, and/or pace; and/or adaptation to change. Within the past two years, the disorder has required psychiatric treatment more than one time and more intensive than outpatient care and/or the individual has experienced an episode of significant disruption to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment or which resulted in intervention by housing or law enforcement officials.

(17) Mental retardation--A diagnosis of mental retardation (mild, moderate, severe, and profound) and significantly subaverage

general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(18) New admission--An individual who is admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission.

(19) Nursing facility--A Texas Medicaid-certified institution, except for a facility certified as an intermediate care facility for persons with mental retardation or related conditions (ICF/MR/RC), providing nursing services to nursing facility residents.

(20) Nursing facility applicant--An individual seeking admission to a Texas Medicaid-certified nursing facility.

(21) Nursing facility resident--An individual who resides in a Texas Medicaid-certified nursing facility and receives services provided by professional medical nursing personnel of the facility.

(22) QMHP--Qualified Mental Health Professional. An individual who has at least one year of experience working with persons with mental illness.

(23) QMRP--Qualified Mental Retardation Professional. An individual who has at least one year experience working with persons with mental retardation and/or a related condition.

(24) Parkinson's Disease--A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(25) PASARR--Preadmission screening and resident review.

(26) PASARR determination--A decision made by DADS or its designee to establish if an individual requires the level of services provided in a nursing facility, as defined by medical necessity, if the individual has the need for specialized services for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment.

(27) Readmission--An individual who is readmitted to a nursing facility from a hospital to which he or she was transferred for the purpose of receiving care.

(28) Related condition--A severe, chronic disability as defined in 42 Code of Federal Regulations §435.1009, in the definition of persons with related conditions, that meets all of the following conditions:

(A) it is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.

(B) it is manifested before the person reaches age 22.

(C) it is likely to continue indefinitely.

(D) it results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(29) Specialized services for individuals with mental illness--The implementation of an individualized plan of care developed under and supervised by an Interdisciplinary Team, which includes a physician, and other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(30) Specialized services for individuals with mental retardation or a related condition--A continuous program for each resident, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Specialized services do not include services to maintain generally independent residents who are able to function with little supervision or in the absence of a continuous specialized services program.

(31) Substantial risk of serious harm to self and/or others--Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(32) Terminal illness--As defined for hospice purposes in 42 Code of Federal Regulations §418.3 in the definition of terminally ill.

(33) Ventilator dependent--Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing.

(b) Preadmission screenings.

(1) Purpose. All new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must be screened prior to admission to a nursing facility to determine if:

(A) the individual has mental illness (MI), mental retardation (MR), and/or a related condition (RC);

(B) the individual needs nursing facility services, as defined by medical necessity; and

(C) the individual requires specialized services.

(2) Readmissions. The following individuals are not subject to preadmission screenings:

(A) readmissions following hospitalizations;

(B) individuals who:

(i) are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(ii) require nursing facility services for the condition for which the individual received care in the hospital; and

(iii) have been certified by their attending physician prior to admission to the nursing facility that they are likely to require less than 30 days of nursing facility services;

(C) individuals who have a terminal illness as defined for hospice purposes in 42 Code of Federal Regulations §418.3, in the definition of terminally ill; and

(D) residents who:

(i) transfer from their current nursing facility residence to a new nursing facility residence;

(ii) have not had any interruption in continuous nursing facility residence other than for acute care hospitalization; and

(iii) have not had any change in their mental condition. For residents who transfer from one nursing facility to another, the transferring nursing facility is responsible for ensuring copies of the most recent PASARR assessment accompany the transferring resident.

(3) Level I Identification Screening. Individuals who are suspected of having mental illness, mental retardation, or a related condition (MI/MR/RC) are identified through the medical necessity screening process.

(A) Medical staff document for the presence of MI if the individual meets the following criteria:

(i) has a diagnosis of MI (excluding a primary diagnosis of Alzheimer's disease or dementia);

(ii) has a level of impairment that results in functional limitations in major life activities within the past three to six months in the areas of interpersonal functioning, concentration, persistence, pace and/or adaptation to change; and

(iii) within the last two years, due to the mental disorder, has had psychiatric treatment more intensive than outpatient care more than once and/or experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

(B) Medical staff document for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC;

(ii) has any history of MR and/or RC identified in the past; or

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC.

(C) Identification of MI, MR, or RC requires that an individual receive a Level II assessment prior to admission to a nursing facility.

(D) An individual, who has medical necessity, may be immediately admitted to or continue residing in a nursing facility if:

(i) MI, MR, or RC was substantiated in writing;

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, functioning at the brain stem level, ventilator dependent, terminally ill, or has a serious medical condition such as chronic obstructive pulmonary disease, anencephaly, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in an impairment so severe that the individual could not be expected to benefit from specialized services;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC;

(v) an individual has Alzheimer's disease and no other diagnosis of MR and/or RC;

(vi) an individual is determined by DADS or its designee during the Level II Assessment process not to have MI/MR/RC.

(4) Level II--PASARR assessment. DADS or its designee assesses the need for nursing facility and specialized services.

(A) The assessment process consists of a:

(i) PASARR preadmission assessment; and

(ii) Level II--PASARR assessment.

(B) Depending on the mental and/or physical condition, an assessment is conducted by one or more of the following:

(i) a registered nurse who is a qualified mental health professional;

(ii) a registered nurse who is a qualified mental retardation professional; and

(iii) a psychologist who is a qualified mental retardation professional with at least a Master's degree; and

(iv) other qualified mental health professionals.

(C) It is the responsibility of the nursing facility to submit the required PASARR assessment to DADS or its designee and request screening of any resident suspected of having MI, MR, or RC.

(c) Change in condition.

(1) The nursing facility will promptly notify DADS or its designee after a significant change in the physical or mental condition of a resident that relates to the MI, MR, or RC diagnosis.

(2) DADS or its designee conducts a review, as described in subsection (b)(4) of this section, and makes a determination, as described in subsection (d) of this section.

(3) DADS or its designee must evaluate and contact the attending physician when there is a question regarding a resident's capacity to understand and meaningfully participate in the decisions regarding his eligibility to remain in the nursing facility, be alternately placed, receive specialized services, and/or initiate appeals.

(A) A surrogate decision maker will be assigned by the attending physician if there is a question regarding capacity and the resident meets the criteria in the Consent to Medical Treatment Act, Health and Safety Code, Chapter 313, as referenced in §19.420(a)(3) of this chapter (relating to Documentation for the Delegation of Long-Term Care Resident's Rights).

(B) A resident will be referred to probate or county court for the assignment of a legal guardian if:

(i) no surrogate decision maker is available; or

(ii) there is a question regarding capacity, but the resident does not meet the criteria for a surrogate decision maker under §19.420(a)(3) of this chapter.

(d) Determination process.

(1) The assessment data is analyzed by a qualified mental health and/or mental retardation professional in order to determine whether:

(A) Nursing facility services are needed, as described in §19.2401 of this chapter (relating to General Qualifications for Medical Necessity Determinations).

(B) An individual requires specialized services for mental illness. The presence of verbalizations or behaviors which indicate a person may pose a substantial risk of serious harm to self or others is evidence that the person requires specialized services.

(C) An individual requires specialized services for mental retardation or a related condition. A response by a person to the environment is evidence that the person requires specialized services.

(2) One of the following determinations is made:

(A) Nursing facility services are needed, but specialized services are not needed. Those individuals may be admitted to or continue residing in a nursing facility.

(B) Nursing facility services are needed and specialized services are needed. Those individuals may be admitted to or continue residing in a nursing facility and receive specialized services within the facility.

(C) Nursing facility services are not needed but specialized services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in paragraph (3) of this subsection. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section.

(D) Nursing facility services are not needed and specialized services are not needed. Those individuals may not be admitted to or continue residing in a nursing facility. Those individuals who are current nursing facility residents must be alternately placed, according to discharge procedures stated under §19.502 of this chapter (relating to Transfer and Discharge in Medicaid-certified Facilities).

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive specialized services in the nursing facility, or seek alternate placement.

(4) If during the determination process DADS or its designee ascertains that a person does not have MI/MR/RC, the PASARR determination process is discontinued and the individual may be admitted to the nursing facility.

(5) DADS or its designee notifies all individuals and their legal representative or surrogate decision maker (SDM) of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, the local mental retardation authority (MRA) or local mental health authority (MHA) as applicable, the Office of the State Long-Term Care Ombudsman, and Texas Health and Human Services Commission (HHSC) Medicaid eligibility staff. Individuals who have undergone a preadmission screening or change in condition are notified within 10 calendar days of the determination.

(6) Any individual, or his legal representative or responsible party or SDM, not in agreement with the PASARR determination may file an appeal with HHSC to receive a fair hearing according to 1 TAC Chapter 357.

(A) If the hearing officer reverses DADS' or its designee's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may be admitted immediately; and as long as the individual meets all other eligibility requirements, the facility may receive vendor payments. Current residents who have met all eligibility criteria may continue to reside in the facility and receive Medicaid reimbursement retroactive to the date when medical and financial eligibility were in effect.

(B) If the hearing officer sustains DADS' or its designee's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may not enter the facility and may not be Medicaid-certified for nursing facility placement. Current residents who have met all eligibility criteria may be alternately placed.

(e) Specialized services and alternate placement.

(1) DADS requests the local MRA to provide service coordination, case management, specialized services, and alternate placement services for persons with mental retardation determined by DADS or its designee to require specialized services and/or request alternate placement. The Department of State Health Services requests the local MHA to provide service coordination, case management, specialized services, and alternate placement services for persons with mental illness determined to require specialized services, alternate placement, or both.

(2) A service coordinator must be assigned for those residents who require specialized services and/or request alternate placement.

(3) DADS provides specialized rehabilitative services, as stated under §19.1303(a) of this chapter (relating to Specialized Services in Medicaid-certified Facilities).

(4) An interdisciplinary team is constituted by the physician, mental health/mental retardation professional, Director of Nurses, or other professionals as appropriate, the resident and legal representative, responsible party or SDM to develop a plan for specialized services and/or alternate placement. This team will identify those additional services required for specialized services that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate.

(5) The service coordinator must provide a monthly written report to the primary or attending physician and to the nursing facility regarding the delivery of specialized services and alternate placement activities. The report will be retained in the resident's clinical record.

(6) The nursing facility must allow Office of the State Long-Term Care Ombudsman staff or representatives from Advocacy, Inc., to counsel and inform affected residents of their rights and options under PASARR.

(7) Specialized services and nursing facility services must be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MRA or MHA, as applicable, or a subcontracted provider to provide specialized services within the facility. If a nursing facility accepts individuals or has individuals who require specialized services for their mental condition, it must establish and maintain a written cooperative agreement with the local MRA or MHA that includes:

(A) general responsibilities of the facility and the provider for delivering the appropriate and mutually supportive services to those residents requiring specialized services for their MI/MR/RC;

(B) a provision allowing the MRA staff or MHA staff to access the resident's clinical record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, responsible party or SDM;

(C) a provision allowing the MRA staff or MHA staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the specialized services needs of an eligible resident are being considered; and

(D) a provision allowing the nursing facility staff to participate in or provide information to the service coordinator during each resident's specialized services planning.

(8) The service coordinator must provide and the nursing facility must maintain, as a separate document in the resident's record, a copy of the original Individual Specialized Services Plan developed by the interdisciplinary team, and any subsequent changes.

(9) The service coordinator must provide to the facility and the facility must document in the comprehensive care plan the following information from the specialized services plan, the designated provider, the service coordinator, other written report, and documented telephone contacts:

(A) efforts to resolve the differences between the specialized services plan and the comprehensive care plan;

(B) specialized services objectives;

(C) the resident's adjustment to the specialized services program; and

(D) changes and modification to the plan.

(10) The facility must ensure that all residents who may benefit from specialized services are identified.

(11) If a resident requires specialized rehabilitation services, the facility must cooperate in obtaining the screening or evaluation.

(12) For those residents who have been determined to be appropriately placed in a nursing facility and to need specialized services and who desire alternate placement, the following alternate placement activities occur:

(A) The MRA or MHA, as applicable, shall locate alternate placement in consultation with the resident or his legal representative.

(B) The resident, his legal representative, or SDM must approve the alternate placement.

(C) If the resident, the legal representative, or SDM refuse all alternate placement options, the resident may remain in the nursing facility and receive specialized services there until an acceptable option is found.

(13) For those residents who have been determined to not need nursing facility services and to need specialized services and who have 30 continuous months of nursing facility residence, a choice will be offered to either seek alternate placement or remain in the nursing facility. If the resident, legal representative, or SDM chooses alternate placement, the following alternate placement activities occur:

(A) The MRA or MHA, as applicable, shall locate alternate placement in consultation with the resident, his legal representative, or SDM.

(B) The resident, his legal representative, or SDM must approve the alternate placement.

(C) Until the resident, his legal representative, or SDM approves an alternate placement, the resident may remain in the nursing facility and receive specialized services.

(14) For those residents determined not to need nursing facility services and to need specialized services but who do not have 30 months continuous residence, the resident will be discharged according to procedures stated under §19.502 of this chapter.

(f) Limitations on provider charges. Nursing facilities that admit or retain residents with a diagnosis of mental illness, mental retardation, or a related condition who have not been screened by DADS or its designee or that admit or retain residents who do not need nursing facility services and who require specialized services will not be reimbursed for that resident, as described in §19.2608 of this chapter (relating to Limitations on Provider Charges).

(g) Discharge planning. Nursing facilities must provide discharge planning services to all residents who are to be alternately placed as described in this section and provide residents those rights described in §19.502 of this chapter.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER AA. VENDOR PAYMENT

### 40 TAC §§19.2609, 19.2611, 19.2615

The amendment and new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER E. RESIDENT RIGHTS



#### 40 TAC §19.413

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.413, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3189).

The amendment is adopted to update §19.413 to be consistent with §712(b) of the Older Americans Act of 1965, as amended in 2006. Section 712(b) requires the State to ensure that certified ombudsmen and staff of the Office of the State Long-Term Care Ombudsman (the Office) have appropriate access to long-term care facilities, residents in those facilities, and residents' clinical records. The amendment ensures DADS is in compliance with the Older Americans Act by clarifying that nursing facilities must give certified volunteer ombudsmen access to residents' medical and social records.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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#### CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§30.14, 30.60, 30.62, and 30.92 in Chapter 30, Medicaid Hospice Program. The amendments to §30.60 and §30.92 are adopted with changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3191). The amendments to §30.14 and §30.62 are adopted without changes to the proposed text.

The amendments are adopted to implement rule changes necessitated by a project under the direction of HHSC that replaces the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with

the federal case-mix system, which is based on the federal Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 *et seq.*, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as the Medicaid Hospice Program, to the automated system of reimbursement. Medicaid hospice providers, therefore, will be required to use the Minimum Data Set (MDS) assessment forms, rather than the TILE-based assessments they currently use, for making medical necessity determinations and calculating the RUG.

The amendments are also adopted to update agency names and rule cross-references.

Two minor editorial changes were made to the text of §30.92 to clarify and improve the accuracy of the section. The changes update a reference to 1 TAC §371.212 and delete a reference to 1 TAC §371.213, which is being repealed by HHSC.

DADS received a written comment from the Coalition for Nurses in Advanced Practice. A summary of the comment and the response follows.

Comment: Concerning §30.60(b)(3), the commenter states that the Medicaid program currently reimburses more than one type of practitioner for physician services. In accordance with 1 TAC §354.1331 and §355.8281, nurse practitioners and clinical nurse specialists are two types of advanced practice nurses that should be reimbursed for services that would be reimbursed if provided by a physician. The commenter requests that the agency add "advance practice nurses" to §30.60(b)(3).

Response: The agency agrees and has added "physician assistants" and "advance practice nurses" to §30.60(b)(3).

#### SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

##### 40 TAC §30.14

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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**SUBCHAPTER F. REIMBURSEMENT**

**40 TAC §30.60, §30.62**

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

*§30.60. Medicaid Hospice Payments and Limitations.*

(a) Medicaid hospice per diem rates. For each day that an individual is under the care of a hospice, the hospice will be reimbursed an amount applicable to the type and intensity of the services furnished to the individual for that day. For continuous home care, the amount of payment is determined based on the number of hours of continuous care furnished to the beneficiary on that day.

(1) Routine home care. The hospice will be paid the routine home care rate for each day the recipient is at home, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(2) Continuous home care. The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate. A minimum of 8 hours must be provided. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day. A maximum of five consecutive days are allowed for reimbursement. Additional days may be allowed with approval from the Department of Aging and Disability Services (DADS).

(3) Inpatient respite care. The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of 5 days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(A) A hospice recipient who receives hospice respite care in a nursing facility and returns home after the respite does not have to be in a Medicaid bed in the nursing facility.

(B) Respite care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (h) of this section.

(C) If the hospice recipient dies as an inpatient, DADS pays the inpatient rate for the day of death.

(4) General Inpatient Care. Payment is made at the general inpatient rate when general inpatient care is provided.

(A) The Inpatient Care rate is paid for the date of admission and all subsequent inpatient days except day of discharge.

(B) For the day of discharge, DADS pays the routine home care rate.

(C) If the hospice recipient dies as an inpatient, DADS pays the inpatient rate for the day of death.

(D) Inpatient care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (h) of this section.

(b) Medicaid payments for physician services.

(1) The Medicaid Hospice Program makes payments to the Medicaid hospice provider for hospice physician services according to the customary and reasonable Texas Medicaid physician charges.

(2) The Medicaid Hospice Program does not pay when hospice physician services are provided by physicians who are not on staff with the Medicaid hospice provider or for independent contractors, who are under contract with the hospice.

(3) Payments for non-hospice physician services to Medicaid hospice recipients are made directly to physicians, physician assistants, or advanced practice nurses by Medicaid through DADS' claims processor.

(4) The Medicaid hospice provider must include physician services in the hospice plan of care and clinical records and must inform physicians on how to bill for services to hospice recipients.

(c) Medicaid hospice-nursing facility per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-nursing facility rate that is 95% of the Medicaid nursing facility rate for each hospice recipient in a nursing facility to take into account the room and board furnished by the facility. When the hospice-nursing facility rate is paid to the hospice provider, Medicaid vendor payment to the nursing facility is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(d) Medicaid hospice-intermediate care facilities for persons with mental retardation or related conditions (ICF/MR-RC) per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-ICF/MR-RC rate that is 95% of the ICF/MR-RC rate for each hospice recipient in an ICF/MR-RC to take into account the room and board furnished by the facility. When the hospice-ICF/MR-RC rate is paid to the hospice provider, Medicaid vendor payment to the ICF/MR-RC is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(e) Medicaid time limitations for DADS hospice payment.

(1) To receive payment of the hospice nursing facility rate, the hospice and nursing facility providers must have completed and submitted a Minimum Data Set (MDS) assessment for the hospice recipient or applicant.

(A) For a hospice recipient or applicant currently residing in the facility with a current MDS assessment, no action is required until the next required MDS assessment.

(B) For a hospice recipient or applicant newly admitted to the facility, the hospice and the nursing facility must complete and submit an MDS assessment as required by §19.801 of this title (relating to Resident Assessment).

(2) An MDS assessment received after the required date will have the stamp-in date as the effective date.

(f) Medicaid payments on Medicare coinsurance for drugs and biologicals. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the Medicaid hospice provider a 5.0% coinsurance on prescription drugs and biologicals, not to exceed \$5 per prescription.

(g) Medicaid payments for Medicare respite coinsurance. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the hospice provider a 5.0% coinsurance for each day of respite care for up to five consecutive days of a hospice coinsurance period.

(h) Third-party resources. Medicaid pays only after all third-party resources have been used.

(i) Medicaid payment limitations for inpatient care. During the 12-month period beginning November 1 of each calendar year and ending October 31 of the following calendar year (the cap year), the aggregate number of inpatient hospice care days must not exceed 20% of the aggregate total number of all hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. If it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate are not counted as inpatient days. The limitation is calculated as follows:

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made;

(B) multiplying excess inpatient care days by the routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount in subparagraph (C) of this paragraph with interim payments made to the hospice inpatient care during the "cap period."

(4) If the inpatient care maximum has been exceeded, DADS recoups excess payments from subsequent Medicaid hospice provider claims.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

### 40 TAC §30.92

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

#### *§30.92. Minimum Data Set Assessment.*

The Department of Aging and Disability Services adopts by reference 1 TAC §371.212 (relating to Minimum Data Set Assessments) and §371.214 (relating to Resource Utilization Group Classification System). Each hospice provider must comply with the Texas Health and Human Services Commission's utilization review requirements found at 1 TAC §371.212 and §371.214.

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

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## CHAPTER 40. USE OF GENERAL REVENUE FOR SERVICES EXCEEDING THE INDIVIDUAL COST LIMIT OF A WAIVER PROGRAM

#### 40 TAC §40.1

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §40.1 in Chapter 40, Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3194).

The new section is adopted to implement provisions of the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007) concerning the use of general revenue for services exceeding an individual's cost limit in certain DADS programs operated in accordance with §1915(c) of the federal Social Security Act. Rider 45 authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit and requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services on September 1, 2005, at a cost that exceeded the waiver program's cost limit.

DADS received no comments regarding adoption of the new section.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), which authorizes the use of general revenue to pay for services that exceed the cost limit of certain waiver programs operated by DADS.

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

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#### CHAPTER 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF BLIND WITH MULTIPLE DISABILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS),

adopts amendments to §42.5 and §42.6, and the repeal of §42.12 in Chapter 42, Medicaid Waiver Program for People Who Are Deaf Blind with Multiple Disabilities, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3195).

The amendments and repeal are adopted to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for Deaf Blind with Multiple Disabilities (DBMD) Program services at 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR) to an individual qualifying for an ICF/MR Level of Care VIII; authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as DBMD Program services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendments are also adopted to update agency names and terminology, to update the rules to reflect current procedures, and to reorganize the structure of the rule for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

DADS received no comments regarding adoption of the amendments and repeal.

#### 40 TAC §42.5, §42.6

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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CHAPTER 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES

40 TAC §42.12

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

SUBCHAPTER B. PROVIDER CONTRACTS

40 TAC §46.13

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §46.13 in Chapter 46, Contracting to Provide Assisted Living and Residential Care Services, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3199).

The amendment is adopted, in part, to implement Senate Bill 1318, 80th Legislature, Regular Session, 2007, which amended Texas Health and Safety Code, §247.069. Section 247.069 requires the Community Based Alternatives (CBA) Program to provide consumers with the opportunity to choose an assisted living facility that meets construction-related licensing standards without regard to the number of units in the facility, if the consumers are advised of all other community-based service options. Senate Bill 1318 removed the specific facility requirements from §247.069, and, therefore, the specific facility requirements need to be removed from the rule.

The amendment is also adopted to implement a rule change necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is

based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The transition to the RUG model affects the Texas Nursing Facility Program, as well as community-based waiver programs, including the CBA Program, which serve individuals who have a determination of medical necessity for nursing facility care. The project also requires that DADS replace its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with an assessment based on the federal Minimum Data Set (MDS) assessment for making medical necessity determinations and calculating the RUG. For the purpose of this rule, the community-based waiver assessment is termed the "medical necessity and level of care assessment."

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which provides consumer choice for assisted living in community care programs.

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

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CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§46.21, 46.41, and 46.45 in Chapter 46, Contracting to Provide Assisted Living and Residential Care Services, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3200).

The amendments are adopted to implement rule changes necessitated by a project under the direction of HHSC that replaces the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utiliza-

tion Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as the Community Based Alternatives (CBA) Program, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. The adopted amendments concern assisted living and residential care services offered under the CBA Program.

The amendments are also adopted to replace references to the Texas Department of Human Services and DHS with references to DADS.

DADS received no comments regarding adoption of the amendments.

## SUBCHAPTER B. PROVIDER CONTRACTS

### 40 TAC §46.21

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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General Counsel

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## SUBCHAPTER C. PROVIDER REQUIREMENTS

### 40 TAC §46.41, §46.45

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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Kenneth L. Owens

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## CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §48.2103, new §48.2106, and the repeal of §48.2123 in Chapter 48, Subchapter C, Community Living Assistance and Support Services (CLASS) Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3203).

The amendment, new section, and repeal are adopted to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for CLASS Program services at 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR); authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as CLASS Program services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendment to §48.2103 is also adopted to update agency names and terminology, to correct cross-references, and to reorganize the structure of the rule for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

DADS received no comments regarding adoption of the amendment, new section, and repeal.

### SUBCHAPTER C. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM

#### 40 TAC §48.2103, §48.2106

The amendment and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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Kenneth L. Owens

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Department of Aging and Disability Services

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### SUBCHAPTER C. MEDICAID WAIVER PROGRAM FOR PERSONS WITH RELATED CONDITIONS

#### 40 TAC §48.2123

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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Kenneth L. Owens

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### CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §48.6003 and §48.6006, and the repeal of §48.6099 in Chapter 48, Subchapter J, Community Based Alternatives (CBA) Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3207).

The amendments and repeal are adopted to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for CBA Program services at 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility; authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as CBA Program services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendments are also adopted to update agency names and terminology, to correct cross-references, and to reorganize the structure of the rule for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

DADS received no comments regarding adoption of the amendments and repeal.

### SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

#### 40 TAC §48.6003, §48.6006

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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## SUBCHAPTER J. 1915(c) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

### 40 TAC §48.6099

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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## SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

### 40 TAC §§48.6021, 48.6022, 48.6078

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§48.6021, 48.6022, and 48.6078 in

Chapter 48, Community Care for Aged and Disabled, Subchapter J, Community Based Alternatives (CBA) Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3210).

The amendments are adopted to implement rule changes necessitated by a project under the direction of HHSC that replaces the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as the CBA Program, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. As a result, DADS will replace its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with an assessment based on the federal Minimum Data Set (MDS) assessment for making medical necessity determinations and calculating the RUG. For the purpose of this rule, the community-based assessment is termed the "medical necessity and level of care assessment."

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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Kenneth L. Owens

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## CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§50.4, 50.10, and 50.16, and the repeal of §50.48 and §50.50 in Chapter 50, §1915(c) Consolidated Waiver Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3212).

The amendments and repeal are adopted in part to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for Consolidated Waiver Program (CWP) services at, as applicable: (1) 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR); (2) 50 percent of the reimbursement rate that would have been paid for that same individual under age 21 to receive services in a nursing facility; or (3) 200 percent of the reimbursement rate that would have been paid for that same individual age 21 or over to receive services in a nursing facility. However, a recent communication from the Centers for Medicare and Medicaid Services states that the waiver cannot have cost limits that vary depending upon a person's age. Therefore, the adopted rules use the higher of the two cost limits described in (2) and (3). Rider 45 also authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as CWP services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendments and repeal are also adopted to implement rule changes necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The transition to the RUG model affects the Texas Nursing Facility Program, as well as community-based waiver programs, including CWP, which serve individuals who have a determination of medical necessity for nursing facility care.

Further, the amendments are adopted to update agency names and terminology, to correct cross-references, and to reorganize the structure of the rules for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

DADS received no comments regarding adoption of the amendments and repeal.

### **40 TAC §§50.4, 50.10, 50.16**

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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### **40 TAC §50.48, §50.50**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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### **40 TAC §50.28**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §50.28 in Chapter 50, §1915(c) Consolidated Waiver Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3216).

The amendment is adopted to implement Senate Bill 1318, 80th Legislature, Regular Session, 2007, which amended Texas Health and Safety Code, §247.069. Section 247.069 requires

residential care programs, including the Consolidated Waiver Program (CWP), to provide consumers with the opportunity to choose an assisted living facility that meets construction-related licensing standards without regard to the number of units in the facility, if the consumers are advised of all other community-based service options. Senate Bill 1318 removed the specific facility requirements from §247.069, and, therefore, the specific facility requirements are removed from the rule.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which provides consumer choice for assisted living in community care programs.

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

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## CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §51.103

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §51.103 in Chapter 51, Medically Dependent Children Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3217).

The amendment is adopted to implement a rule change necessitated by a project under the direction of HHSC that replaces the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medi-

care and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as MDCP, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. The reference in §51.103(13) to an individual's TILE score will not be applicable under the RUG system and, therefore, needed to be revised.

The amendment is also adopted to update terminology in response to House Bill 2426, 80th Legislature, Regular Session, 2007, which amended the Texas Occupations Code, Chapter 301, and changed the name of the Board of Nurse Examiners for the State of Texas (BNE) to the Texas Board of Nursing.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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## CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §51.203, the repeal of §51.239, and new §51.409 in Chapter 51, Medically Dependent Children Program, without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3218).

The amendment, new section, and repeal are adopted to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for

Medically Dependent Children Program (MDCP) services at 50 percent of the reimbursement rate that would have been paid for the same individual to receive services in a nursing facility; authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as MDCP services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

DADS received no comments regarding adoption of the amendment, new section, and repeal.

## **SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES**

### **DIVISION 1. ELIGIBILITY**

#### **40 TAC §51.203**

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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### **DIVISION 3. SERVICES**

#### **40 TAC §51.239**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021,

which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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## **SUBCHAPTER D. PROVIDER REQUIREMENTS**

### **DIVISION 1. CONTRACTING REQUIREMENTS**

#### **40 TAC §51.409**

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid 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.

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## **CHAPTER 60. CONTRACTING TO PROVIDE PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)**

### **40 TAC §60.16**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS),

adopts an amendment to §60.16 in Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE), without changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3221).

The amendment is adopted to implement a rule change necessitated by a project under the direction of HHSC that replaces the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as PACE, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. As a result, DADS will replace its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with forms based on the federal Minimum Data Set (MDS) assessment for making medical necessity determinations and calculating the RUG. For the purpose of this rule, the community-based assessment is termed "the medical necessity and level of care assessment."

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

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

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## CHAPTER 83. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

### 40 TAC §§83.1, 83.2, 83.11

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §§83.1, 83.2, and 83.11 in Chapter 83, Area Agency on Aging Administrative Requirements, without changes to the proposal as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3222).

HHSC, on behalf of DADS, is adopting new rules that govern area agencies on aging and implementation of the Older Americans Act of 1965, as amended in 2006, elsewhere in this issue of the *Texas Register*. As part of the adoption of rewritten and reorganized rules in Chapter 85, DADS adopts the repeal of obsolete rules in Chapter 83 that are no longer required in the rule base.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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

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## CHAPTER 84. GENERAL SERVICE REQUIREMENTS

### 40 TAC §§84.1 - 84.3, 84.5 - 84.9, 84.11, 84.13, 84.15, 84.17, 84.19, 84.21, 84.23

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §§84.1 - 84.3, 84.5 - 84.9, 84.11, 84.13, 84.15, 84.17, 84.19, 84.21, and 84.23, without changes to the proposal as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3223).

HHSC, on behalf of DADS, is adopting new rules that govern area agencies on aging and implementation of the Older Americans Act of 1965, as amended in 2006, elsewhere in this issue of the *Texas Register*. As part of the adoption of rewritten and reorganized rules in Chapter 85, DADS adopts the repeal of ob-

sole rules in Chapter 84 that are no longer required in the rule base.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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

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## CHAPTER 85. IMPLEMENTATION OF THE OLDER AMERICANS ACT

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §§85.2, 85.201, 85.202, 85.208, 85.301 - 85.310, and 85.401, in Chapter 85, Implementation of the Older Americans Act. New §§85.2, 85.201, 85.302, 85.306, 85.307, and 85.401 are adopted with changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3225). New §§85.202, 85.208, 85.301, 85.303 - 85.305, and 85.308 - 85.310 are adopted without changes to the proposed text.

The adopted new rules describe the services provided by, and the administrative and fiscal responsibilities of, the 28 area agencies on aging, commonly referred to as "triple A's," (AAAs) in the state of Texas. A AAA is a public or private nonprofit agency or organization, designated by DADS in accordance with the Older Americans Act, §305(a)(2)(A), that develops and implements an area plan to provide services to program participants.

The adopted new rules rewrite and reorganize DADS rules so that they are easier for AAAs and the public to use and understand. The rules reorganize current AAA requirements into new subchapters, clarify and update rule language to reflect current agency practice, correct rule cross-references, and ensure that the rules that govern AAAs are more consistent with other DADS rules, including those rules that relate to services similar to those provided by a AAA. In particular, the adopted new rules contain provisions that permit a AAA to provide homemaker services as a consumer directed service, a practice already in place.

Further, the rules are adopted to comply with changes to the Older Americans Act of 1965, as amended in 2006. Specifically, the rules permit a grandparent, step-grandparent, or relative by

blood, marriage, or adoption who is 55 years of age or older and caring for a child or an individual with a disability, to receive respite voucher services if other eligibility criteria are met. The previous federal law required the grandparent, step-grandparent, or relative to be 60 years of age or older and be caring for a child 18 years of age or younger. The rules also contain a reference to the new targeting requirement in the Older Americans Act for a AAA to give priority to older individuals at risk for institutional placement. In addition, the new rules more accurately reflect the requirements of the Ombudsman Program set forth in §711 and §712 of the Older Americans Act.

In a related adoption, HHSC, on behalf of DADS, adopts the repeal of obsolete and duplicative rule language in Chapters 83, 84, and 100 of this title elsewhere in this issue of the *Texas Register*.

Minor editorial changes were made to the text of §§85.2, 85.201, and 85.401 to clarify and improve the accuracy of the sections. Specifically, a change to §85.2(20)(C) was made to reflect that a durable power of attorney, in addition to a medical power of attorney, may allow for an agent to make health care decisions for a person. A change was made to §85.2(33) to clarify that an ombudsman intern is not considered to be a staff person of a AAA. A change was made to §85.201(c)(1) to make the title of the Older Americans Act consistent with its use in the rest of Chapter 85. A change was made to §85.201(h) to delete reference to 45 CFR Part 164 (regulations concerning the Health Insurance Portability and Accountability Act) because enforcement of those regulations is a function performed by the Federal Office of Civil Rights. Language was added to §85.401(b) to clarify that the requirements of §85.401 apply to a AAA in its role as the local ombudsman entity. A change was made to §85.401(k) to more accurately reflect the provision in the Older Americans Act about disclosure of information regarding residents. Finally, changes were made to §85.401(g)(1)(C) and (F), (g)(2), and (q)(2) to correct the title of the DADS Ombudsman Policies and Procedures Manual.

DADS received written comments from the Coalition for Nurses in Advanced Practice (CNAP). A summary of the comments and the responses follows.

Comment: CNAP notes that many older Americans now receive their primary care from a nurse practitioner or clinical nurse specialist (two types of advanced practice nurses) and recommends that AAAs be allowed to recognize documentation and orders from advanced practice nurses, in addition to physicians. Specifically, the commenter suggests adding "advance practice nurse" to §§85.302(j)(1), 85.306(e)(1)(B) and (C), and 85.306(e)(5)(A)(ii).

Response: The agency agrees with the commenter, but is making a change to these rules to allow a AAA to recognize orders for medication and other treatment from any practitioner permitted by law to issue such orders by adding "or other health care practitioner acting within the scope of the practitioner's authority and license."

Comment: Concerning §85.307(h), the commenter suggests adding "primary care provider" to the rule because a program participant's primary care provider may not be a physician.

Response: The agency agrees and has added language to that effect to the rule.

### SUBCHAPTER A. DEFINITIONS

#### 40 TAC §85.2

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§85.2. *Definitions.*

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

(1) AAA--An area agency on aging (commonly referred to as a "triple A"). A public or private nonprofit agency or organization, designated by DADS in accordance with the Older Americans Act, §305(a)(2)(A), that develops and implements an area plan.

(2) Adult--A person who is 18 years of age or older.

(3) Alarm call--A signal transmitted from an electronic monitoring system to a service provider's response center indicating a program participant needs immediate assistance.

(4) Area plan--A plan developed and implemented by a AAA for its planning and service area that establishes a comprehensive and coordinated system of services in accordance with the Older Americans Act, §306(a).

(5) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

(6) Certified ombudsman--A certified staff ombudsman or a certified volunteer ombudsman.

(7) Certified staff ombudsman--A person who:

(A) meets the qualifications described in §85.401(g)(1) of this chapter (relating to Long-Term Care Ombudsman Program);

(B) is employed by or is contracting with a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter; and

(C) performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.

(8) Certified volunteer ombudsman--A person who:

(A) meets the qualifications described in §85.401(g)(1) of this chapter;

(B) is not employed by or contracting with a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter; and

(C) voluntarily performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.

(9) Contract--A binding agreement between a AAA and a subcontractor obligating the subcontractor to take responsibility for the complete implementation and administration of a service described in this chapter, including determining which individuals are eligible to receive such a service and providing the service to such individuals.

(10) Child--A person who is under 18 years of age.

(11) Cost reimbursement--Payment of actual costs incurred for goods or services.

(12) DADS--The Department of Aging and Disability Services. DADS is the sole state agency (also referred to as the "state unit on aging") designated in accordance with the Older Americans Act, §305(a)(1).

(13) Day--A calendar day, unless otherwise specified.

(14) Direct purchase--When items or services are obtained from a vendor.

(15) Disability (except when such term is used in the phrase "severe disability")--A disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living;

(G) economic self-sufficiency;

(H) cognitive functioning; and

(I) emotional adjustment.

(16) Electric monitoring system--The equipment used to allow a program participant to call an ERS vendor for assistance in the event of an emergency. Such equipment includes an alert bracelet or necklace that can be activated by the program participant and the signal box to receive the call from the program participant.

(17) ERS--Emergency response services.

(18) Fixed unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement, that remains the same until the contract or vendor agreement is renegotiated, regardless of the amount of services provided, the number of program participants served, or the number of events that occur.

(19) Friendly visitor--A volunteer for a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter who:

(A) is not a certified ombudsman or ombudsman intern;

(B) meets the qualifications described in §85.401(g)(2) of this chapter; and

(C) performs activities to further the mission of the Long-Term Care Ombudsman Program such as visiting residents and coordinating social activities.

(20) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(21) Local ombudsman entity--A AAA or other entity designated by DADS to provide services in the Long-Term Care Ombudsman Program in accordance with the Older Americans Act, §712(a)(5)(A).

(22) LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification) or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247, and Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities).

(23) Means testing--Using a person's income and resource data.

(24) Office--The Office of the State Long-Term Care Ombudsman. A division of DADS established to oversee the statewide implementation of the Long-Term Care Ombudsman Program.

(25) Older Americans Act--A federal law enacted to establish and fund a comprehensive service system for persons 60 years of age or older.

(26) Ombudsman intern--A person who is being trained to be a certified volunteer ombudsman in accordance with DADS Ombudsman Certification Training Manual but has not been approved by the Office to be a certified volunteer ombudsman.

(27) Planning and service area--A geographical area, consisting of one or more counties, for which DADS designates one AAA to develop and implement an area plan.

(28) Program participant--A person receiving a service described in this chapter.

(29) Resident--A person who resides in an LTC facility.

(30) Responder--A person identified by the program participant or designated by the AAA who will respond to an alarm call by a program participant.

(31) Service provider--A subcontractor or a vendor.

(32) Severe disability--A severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in three or more of the major life activities specified in paragraph (15)(A) - (I) of this section.

(33) Staff person--Personnel, including a full-time and part-time employee, contractor, and intern other than an ombudsman intern, but excluding a volunteer.

(34) State Long-Term Care Ombudsman--The person designated by DADS to be the administrator of the Office.

(35) Subcontractor--The party with whom a AAA enters into a contract.

(36) System check--Activating the call button of an electronic monitoring system to test the system.

(37) Variable unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement that may change depending on the criteria and conditions set forth in the contract or vendor agreement.

(38) Vendor agreement--A binding agreement between a AAA and a vendor obligating the vendor to provide goods or services to individuals determined eligible by the AAA for such goods or services as part of the AAA's implementation and administration of a service described in this chapter.

(39) Vendor--The party with whom a AAA enters into a vendor agreement.

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

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER C. AAA ADMINISTRATIVE REQUIREMENTS

### 40 TAC §§85.201, 85.202, 85.208

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§85.201. *AAA Administrative Responsibilities.*

(a) Purpose. This section:

(1) establishes the responsibilities of a AAA in developing and maintaining an organized and efficient system of administration that demonstrates accountability and compliance with state and federal law and with all terms and conditions of the contract it enters into with DADS; and

(2) applies to a service under the Older Americans Act provided to a program participant that is funded, in whole or in part, by DADS.

(b) Structure of a AAA.

(1) A AAA must:

(A) reflect its organizational structure through job descriptions, staffing plans, area plans, and organizational charts that demonstrate its ability to effectively administer Older Americans Act programs and other programs funded by DADS;

(B) identify a person as a director or manager of the AAA;

(C) if a director or manager position becomes vacant, ensure that a qualified staff person is assigned to perform the duties of the director or manager until the position is filled;

(D) budget all positions based on the projected percentage of time to be spent performing the duties of an identified service;

(E) maintain documentation to support the actual time spent performing the duties of an identified service; and

(F) comply with the *Service Definitions for Area Agencies on Aging* available at [www.dads.state.tx.us](http://www.dads.state.tx.us) for all services funded by DADS.

(2) In accordance with the Older Americans Act, §306(a)(6)(D), a AAA must establish an advisory council that:

(A) continually advises the AAA on all matters relating to the development and administration of and operations conducted under the area plan; and

(B) consists of persons who are 60 years of age or older (including minority persons and persons residing in rural areas) who are program participants or who are eligible to participate in programs under the Older Americans Act, family caregivers of such individuals, representatives of persons 60 years of age or older, service providers, representatives of the business community, local elected officials, providers of veterans' health care, if appropriate, and the general public.

(3) A AAA must ensure that its board members, employees, advisory committee members, and volunteers are not subject to a conflict of interest, as described in subparagraph (A) of this paragraph, in fact or perception, and notify DADS in accordance with DADS Program Instruction AAA - PI 500 *Conflicts of Interest*, when potential conflicts of interest occur.

(A) A conflict of interest includes:

(i) having a substantial financial interest, directly or indirectly, in the profits of any entity from which services or goods are contracted or otherwise procured by the AAA; and

(ii) deriving a personal profit, directly or indirectly, from any entity that would conflict in any manner or degree with the performance of responsibilities of the board member, employee, advisory committee member, or volunteer.

(B) A AAA must comply with §85.401(i) of this chapter (relating to Long-Term Care Ombudsman Program).

(C) A AAA must include a requirement in a request for proposal (RFP) for services for older persons and requests for vendor enrollment that any potential conflicts of interest be identified in the RFP or vendor enrollment response. The notification of potential conflicts of interest must include:

(i) the person and the nature for which a potential conflict of interest exists; and

(ii) the relationship to any current or former board member, current or former aging advisory committee member, or current or former employee.

(c) Compliance with laws, rules, regulations, and other requirements. A AAA must comply with applicable federal and state laws, rules, and regulations, standards, and instructions, including:

- (1) the Older Americans Act of 1965;
- (2) state laws regarding the financial operation of a AAA;
- (3) 45 Code of Federal Regulations (CFR) §1321.67;
- (4) 45 CFR §92.25;
- (5) Uniform Grant Management Standards;

(6) Office of Management and Budget Circulars; and

(7) DADS Program Instructions.

(d) Accountability.

(1) A AAA must:

(A) maintain financial and programmatic systems capable of producing expenditure reports, cost center analyses, budgets, and state and federal reports;

(B) develop and implement written policies and procedures to back up automated information systems and continually update virus protection software to prevent the loss or corruption of program and financial data;

(C) meet programmatic and fiscal performance targets as outlined in the approved budget, as amended, within a five percent variance; and

(D) submit fiscal and programmatic reports required by DADS in a timely, complete, and accurate manner.

(2) A request for an extension to submit fiscal and programmatic reports must be submitted in writing to the AAA Help Desk at DADS on or before the date and time the reports are due.

(3) DADS may grant up to two requests for an extension per report per federal fiscal year. A AAA may be granted no more than a total of eight extensions per federal fiscal year. The length of an extension is negotiated, as much as possible, but DADS makes the final decision regarding extensions.

(4) A AAA must comply with the terms of all applicable interagency agreements, including those agreements legislatively mandated or to which DADS and the AAA are parties.

(e) Review of subcontractors.

(1) A AAA must review a subcontractor's programs and fiscal activities on a regular and systematic basis. Reviews must be conducted through a desk audit or by on-site review. A AAA must conduct a risk assessment annually to determine the necessity of an on-site review if it conducts an on-site review less than annually for all subcontractors.

(2) A AAA must conduct an annual customer satisfaction survey of program participants utilizing the process furnished by DADS.

(3) A AAA must comply with the requirements specified in §81.13 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions) when imposing sanctions against a subcontractor for noncompliance with a contract.

(4) A AAA may develop requirements for a subcontractor in addition to those listed in paragraphs (1) - (3) of this subsection.

(f) Targeting. A AAA must ensure, in providing a service described in Subchapter D of this chapter (relating to Older Americans Act Services), that priority is given to persons:

(1) described in the Older Americans Act, §306(a)(4)(B)(i); and

(2) who have an unmet need for such a service.

(g) Means testing. A AAA must not use means testing for purposes of determining a person's eligibility to receive services, in accordance with the Older Americans Act, §315(b)(3).

(h) Confidentiality.



(1) A AAA must comply with all applicable state and federal laws, rules, and regulations related to the confidentiality of program participant information, including 45 CFR §1321.51 and §85.401(k) of this chapter.

(2) A AAA must:

(A) keep the records of a program participant in a secure, locked facility when not in use by authorized personnel; and

(B) limit access to program participant records maintained in computer information systems through acceptable computer security practices, including password protection.

(i) Satisfaction with services. A AAA must, at least annually, give a program participant an opportunity to express his or her level of satisfaction with the services provided.

(j) Grievances. A AAA must:

(1) implement grievance procedures in accordance with §81.19 of this title (relating to Grievance Procedures for Participants in Older Americans Act Programs); and

(2) inform a program participant of the grievance procedures.

(k) Service participation. A AAA must not require a program participant to be a member in a specific private organization, group, association, or fraternal organization as a condition of receiving services, which includes permitting services to be provided in an organization's facility to which admission is limited to members of the organization.

(l) Contributions. A AAA:

(1) must provide a program participant with an opportunity to contribute toward the cost of the services the program participant receives;

(2) must not require a program participant to contribute toward the cost of services the program participant receives;

(3) may provide a program participant with a contribution schedule that suggests a contribution amount based on the income ranges of the program participant population, but may not determine a program participant's income using a means test;

(4) must protect the privacy of a program participant with respect to the program participant's contribution;

(5) must establish appropriate procedures to safeguard and account for all contributions made; and

(6) must use all program participant contributions to support or expand services for which the program participant contributed, in accordance with applicable state and federal laws, rules, and regulations.

(m) Facilities. A AAA must ensure that facilities in which services are provided are in compliance with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations.

(n) Tobacco policy. A AAA must prohibit the use of tobacco during the hours of operation of and in areas designated for Older Americans Act programs.

(o) Insurance. A AAA must maintain insurance that protects the health and safety of its employees and of program participants and complies with all applicable state and federal laws, rules, and regulations.

(p) Records. A AAA:

(1) must develop, maintain, and retain records in accordance with the Uniform Grant Management Standards, Subpart C;

(2) must establish written procedures to adequately ensure proper development, maintenance and retention of all financial records, supporting documents, statistical records and all other records relating to its performance;

(3) must maintain all records for a minimum of five years following the end of the federal fiscal year to which the record pertains and until any pending litigation, claim or audit findings, issuance or proposed disallowed costs or other disputes have been resolved;

(4) must maintain all records at a designated central location regardless of whether the AAA has one or multiple locations; and

(5) must give DADS, the Comptroller General of the United States, and the State of Texas, through any authorized representatives, access to its records, including:

(A) financial records such as contracts, general ledgers, invoices, accounts payable, and accounts receivable;

(B) program participant records unless specifically prohibited by law;

(C) other documents related to DADS funded programs; and

(D) any other records not directly related to the AAA if the purpose of such access is to review charges to any indirect costs pool.

(q) Service provider compliance. A AAA must ensure that a service provider complies with requirements described in subsections (f) - (p) of this section.

(r) Contingency plan. A AAA must have a written plan ensuring continuity of services to a program participant in the event a service provider is unable to provide a service.

(s) Designation of focal points. A AAA must comply with the Older Americans Act, §306(a)(3)(A) and (B) regarding designation of focal points.

(t) Visibility.

(1) A AAA must use the logo designed by DADS (illustrated in paragraph (2) of this subsection) to ensure a uniform, statewide symbol for AAAs.

(2) A AAA must use the logo on all printed material it develops.

Figure: 40 TAC §85.201(t)(2)

(u) AAA contact information.

(1) A AAA must publicize its contact information through a variety of media such as telephone directories, resource directories, the Internet, and other outreach tools for persons who reside in any geographical area that lies in whole or in part in the planning and service area served by the AAA.

(2) Contact information must begin with the words "area agency on aging" and must include the host agency, as applicable. A AAA must ensure that a telephone call to the AAA is answered "area agency on aging."

(v) Phrase for printed material. A AAA must cite DADS as the primary funding source using the phrase "Funded by the Department of Aging and Disability Services" or "Funded in part by Department of Aging and Disability Services" on all printed material.

(w) Identification of a AAA facility. A AAA must prominently display a sign outside its primary place of business that:

- (1) adheres to local ordinances concerning signs; and
- (2) conforms to the requirements in subsection (t) of this section.

(x) Emergency management.

(1) When a disaster occurs, a AAA must notify DADS of its need to provide for emergency management activities, provide information to DADS regarding the impact of the disaster on the older population in its service area, provide emergency management services in accordance with current Administration on Aging disaster relief guidelines, and collect pertinent data necessary to submit reimbursement requests for disaster services.

(2) A AAA must consult with the appropriate agencies that have an interest or role in meeting the needs of persons 60 years of age or older to plan for the occurrence and aftermath of natural, civil defense, or man-made disasters. To accomplish this, a AAA must:

(A) develop an emergency disaster plan in accordance with DADS requirements;

(B) require by contract or vendor agreement that a service provider develop plans for emergency management; and

(C) provide technical assistance as necessary to service provider staff persons regarding emergency management activities.

(y) Reporting abuse, neglect, or exploitation.

(1) A AAA must instruct its staff persons and representatives to report allegations of abuse, neglect, or exploitation of a program participant to the Department of Family and Protective Services (DFPS) in accordance with Texas Human Resources Code, Chapter 48. A report must be made by calling 1-800-252-5400 or by following the instructions available at [www.txabusehotline.org](http://www.txabusehotline.org).

(2) The AAA must take appropriate corrective action if:

(A) a staff person does not report an allegation of abuse, neglect, or exploitation of a program participant in accordance with Texas Human Resources Code, Chapter 48; or

(B) DFPS confirms abuse, neglect, or exploitation of a program participant by a staff person of the AAA.

(z) Emergency services. A AAA must instruct all of its staff persons to call 911 or another local emergency hotline for fire-fighting, police, medical, or other emergency services, as appropriate, in the event of an emergency involving a program participant.

(aa) Reporting waste, abuse, or fraud.

(1) A AAA must instruct its staff persons and representatives to report allegations of waste, abuse, or fraud, as defined in 1 TAC §371.1601 (relating to Definitions), regarding a service described in subsection (a)(2) of this section. A report must be made to:

(A) the Texas Health and Human Services Commission (HHSC), Office of the Inspector General, in accordance with the HHSC instructions available at [www.hhs.state.tx.us](http://www.hhs.state.tx.us); and

(B) DADS by calling 1-800-436-6184.

(2) The Office of the Inspector General investigates reports of waste, abuse, or fraud in accordance with 1 TAC, Chapter 371, Subchapter G.

(bb) Ethical conduct.

(1) A AAA must ensure that its staff persons and representatives conduct themselves in an ethical manner.

(2) A AAA staff person may not:

(A) engage in inappropriate treatment of a program participant or person seeking services;

(B) withhold or suppress a complaint or report against the AAA or DADS;

(C) retain or distribute program participant information for personal gain;

(D) obtain a certification by fraud or deceit; or

(E) knowingly participate in the preparation of false or misleading program participant information.

(3) A AAA must instruct all staff persons and representatives to report allegations of unethical conduct, as described in paragraph (2) of this subsection, to DADS' AAA Section Manager.

(cc) Service provider compliance. A AAA must ensure that a service provider complies with the requirements described in subsections (y), (z), (aa)(1)(A), and (bb) of this section.

(dd) Complaints. A AAA must ensure that a service provider:

(1) on or before initiation of a service described in Subchapter D of this chapter, informs a program participant, in writing, of the procedure by which the program participant may file a complaint regarding such service;

(2) obtains and maintains documentation of receipt of the complaint procedure by the program participant;

(3) date stamps receipt of a written complaint;

(4) documents receipt of an oral complaint, with the date of receipt and a narrative of the allegations;

(5) investigates each complaint and responds, in writing, to the program participant regarding the results of the investigation in a timely manner; and

(6) maintains a written log of complaints filed by program participants that is accessible to the AAA and contains the following information:

(A) the date of the service provider's receipt of the complaint;

(B) the name of the person who filed the complaint;

(C) a description of the nature of the complaint;

(D) the name of the staff person who conducted the investigation of the complaint;

(E) the names of persons who were contacted during the investigation of the complaint;

(F) the outcome of the complaint; and

(G) the date final action was taken by the service provider in response to the complaint.

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

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General Counsel  
Department of Aging and Disability Services  
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For further information, please call: (512) 438-3734



## SUBCHAPTER D. OLDER AMERICANS ACT SERVICES

### 40 TAC §§85.301 - 85.310

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

#### §85.302. *Nutrition Services.*

(a) Purpose. This section establishes the requirements for nutrition services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility.

(1) A AAA must ensure that a program participant who receives a congregate meal:

(A) is 60 years of age or older;

(B) meets the eligibility criteria to receive a congregate meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers*; and

(C) before service initiation and at least every 12 months thereafter, has had a Nutritional Risk Assessment completed by a service provider or a staff person of the AAA.

(2) A AAA must ensure that a program participant who receives a home-delivered meal:

(A) is 60 years of age or older;

(B) meets the eligibility criteria to receive a home-delivered meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers*; and

(C) before service initiation and at least every 12 months thereafter;

(i) has had a Nutritional Risk Assessment completed by a service provider or staff person of the AAA; and

(ii) has had a functional assessment completed by a service provider or staff person of the AAA using the data elements contained in DADS' Form 2060, available at [www.dads.state.tx.us](http://www.dads.state.tx.us), and based on the results of such assessment, meets the minimum requirements in accordance with DADS instructions.

(c) Facilities and food service. A AAA must ensure that a service provider:

(1) complies with 25 TAC, Chapter 229 (relating to Food and Drug) in the preparation, handling, and provision of food; and

(2) provides the AAA a copy of all results from inspections required by state law or rule.

(d) Nutrition Services Incentive Program compliance. A AAA must ensure that a service provider:

(1) complies with the Older Americans Act, §311, relating to the Nutrition Services Incentive Program; and

(2) includes only eligible meals (that is, meals delivered to program participants who meet the criteria described in subsection (b) of this section) in reports related to the Nutrition Services Incentive Program.

(e) Meal costs. A AAA must ensure that a service provider:

(1) posts the cost of a meal for purposes of cost recovery as described in paragraph (2) of this subsection;

(2) recovers, at a minimum, the cost of a meal that is not an eligible meal as defined in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregiver*; and

(3) keeps payments for ineligible meals separate from contributions from program participants.

(f) Service days. A AAA must ensure that a service provider:

(1) provides meals in accordance with the Older Americans Act, §331 and §336; and

(2) obtains, in accordance with DADS Program Instruction AAA-PI 300 *Older Americans Act Nutrition Waiver Requests*, prior approval from the AAA and DADS if service frequency is less than five days per week.

(g) Meal requirements. A AAA must ensure that a service provider complies with the Older Americans Act, §339(2)(A), relating to compliance with the current Dietary Guidelines for Americans and Dietary Reference Intakes.

(h) Menus.

(1) A AAA must ensure that, for each meal included on the menu and listed allowable substitutions, a service provider obtains:

(A) approval, in writing, from a dietitian consultant that the meal meets one-third of the recommended dietary allowance as referenced in the Dietary Reference Intakes for a person 60 years of age or older and the current Dietary Guidelines for Americans as required by the Older Americans Act, §339(2)(A); and

(B) the written approval before the date the meal is served.

(2) The dietitian consultant required by paragraph (1) of this subsection must:

(A) be a licensed dietitian in accordance with Texas Occupations Code, Chapter 701;

(B) be a registered dietitian with the Commission on Dietetic Registration/American Dietetic Association; or

(C) have a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(3) A AAA must ensure that a service provider's planned menus provide for variety in flavor, consistency, texture, and temperature.

(i) Standard recipes. A AAA must ensure that a service provider plans and manages food production through the use of standardized recipes adjusted to yield the number of servings needed and to provide for consistency in quality and documented nutrient content of food prepared.

(j) Modified diets.

(1) A AAA must permit a service provider to deviate from the standard menu pattern for therapeutic medical diets as required by the participant's medical condition as documented by a physician or other health care practitioner acting within the scope of the practitioner's authority and license.

(2) A AAA may allow a service provider to provide therapeutic medical diets based on the service provider's ability to do so.

(k) Emergency or inclement weather or service frequency less than five days a week. If a service provider delivers frozen, chilled, or shelf-stable meals for emergency or inclement weather situations, or if the service provider's service frequency is less than five days per week, a AAA must ensure that the service provider:

(1) delivers the meals only if the program participant has sanitary and safe conditions for storing, thawing, and reheating the meals;

(2) determines the meals can be safely handled by the program participant or another available person if the participant is unable to safely handle the meal; and

(3) complies with the DADS Program Instruction AAA - PI 300 *Older Americans Act Nutrition Waiver Requests*.

(l) Meal packaging. A AAA must ensure that a service provider:

(1) uses supplies and carriers to package and transport hot foods separately from cold foods;

(2) uses enclosed meal carriers used to transport easily damaged trays or containers of hot or cold foods to protect such food from contamination, crushing, or spillage and equips the meal carriers with insulation or supplemental hot or cold sources as is necessary to maintain safe temperatures; and

(3) complies with the following in packaging meals:

(A) seals the meal container to prevent moisture loss or spillage to the outside of the container;

(B) maintains a safe temperature of the packaged meal throughout transport;

(C) uses a container designed with compartments to separate food items for visual appeal and to minimize spillage between compartments; and

(D) uses a container a program participant can easily open.

(m) Holding time. A AAA must ensure that a service provider does not allow more than four hours to expire from the time the cooking or reheating of food is completed and the time the food is served to the program participant.

(n) Delivery of home-delivered meals.

(1) A AAA must ensure that a service provider:

(A) delivers meals between 10:30 a.m. and 1:30 p.m.;

(B) keeps meals that are prepared and packaged for delivery at the following temperatures:

(i) 40 degrees Fahrenheit or below for cold food items; and

(ii) 135 degrees Fahrenheit or above for hot food items;

(C) does not leave meals unattended at the program participant's residence; and

(D) develops written procedures:

(i) ensuring meals are safe and sanitary for the program participant;

(ii) requiring follow-up with a program participant who was not available when a meal delivery was attempted on the same day the attempt was made; and

(iii) ensuring a significant change in a program participant's physical or mental condition or environment is reported to the service provider and appropriate action taken by the service provider on the same day the service provider is notified of the change.

(2) A AAA may reimburse a service provider for a maximum of two attempted but unsuccessful meal deliveries per program participant per month.

(o) Training.

(1) A AAA must ensure that a service provider provides at least one hour of training to a staff person or volunteer of a service provider who is involved in the administration or provision of nutrition services before the staff person or volunteer assumes duties. The training topics must include:

(A) program participant confidentiality;

(B) procedures used in handling emergency situations involving program participants;

(C) sanitary methods used in serving and delivering meals;

(D) general knowledge and basic techniques of working with a person 60 years of age or older and a person with a disability; and

(E) personal hygiene.

(2) A AAA must ensure that a service provider provides the following training to a staff person or volunteer of a service provider who is involved only in the administration of nutrition services before the staff person or volunteer assumes duties:

(A) the training described in paragraph (1) of this subsection; and

(B) one hour of training on the content and implementation of applicable forms, rules, procedures, and policies of DADS, the AAA, and the service provider relating to the administration or provision of nutrition services.

(3) A AAA must ensure that a service provider provides at least two hours of training to a food service supervisor before the supervisor assumes duties. Training topics must include:

(A) personal hygiene;

(B) food storage, preparation and service, including prevention of food borne illness;

(C) equipment cleaning before, during, and after meal service;

(D) selection of proper utensils and equipment for transporting and serving foods;

(E) automatic and manual dishwashing procedures; and

(F) accident prevention.

(4) In addition to the training required by paragraph (3) of this subsection, a AAA must ensure that a service provider provides at least six hours of training to a food service supervisor no later than 30 days after the supervisor assumes duties. Training topics must include:

(A) practical procedures for food preparation, storage, and serving;

(B) portion control of food in appropriate dishes;

(C) use of standardized recipes;

(D) nutritional needs and meal pattern requirements of older program participants to be served; and

(E) quality control of:

(i) flavor;

(ii) consistency;

(iii) texture;

(iv) temperature; and

(v) appearance (including the use of garnishes).

(5) A AAA must ensure that the service provider's food service supervisor complies with 25 TAC §229.163 (relating to Management and Personnel).

(6) A AAA must ensure that a service provider documents the provision of training required by paragraphs (1) - (4) of this subsection. The documentation must include the names of the staff person or volunteer being trained and the trainer; the topics covered; and the date, time, and length of the training.

(7) A AAA must ensure that a service provider has an adequate number of staff persons available during the time congregate meals are provided who are certified in:

(A) first aid;

(B) cardiopulmonary resuscitation; and

(C) operating an automatic external defibrillator, if one is available.

(p) Nutrition outreach. A AAA must ensure that a service provider develops and maintains a written outreach plan giving priority to persons described in the Older Americans Act, §306(a)(1).

(q) Nutrition education. In accordance with the Older Americans Act, §339(2)(J), a AAA must ensure that a program participant is provided with nutrition screening, nutrition education, and if appropriate, nutrition assessment and counseling.

(r) Political activity. A AAA must ensure that a service provider does not:

(1) use a congregate meal site for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a congregate meal site.

(s) Religious activities and prayer. A AAA must ensure that a service provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a nutrition site staff person; or

(2) prohibit a program participant from praying silently or audibly at a congregate meal site if the program participant so chooses.

(t) Monitoring.

(1) A AAA must monitor:

(A) a subcontractor providing nutrition services in accordance with §85.201(e) of this chapter (relating to AAA Administrative Responsibilities); and

(B) a vendor providing nutrition services in accordance with §83.19(f) of this title (relating to Direct Purchase of Service (DPS)).

(2) A AAA must ensure that the Department of State Health Services or the local health authority, as applicable, or the service provider monitors a food preparation site, at least annually, to determine whether the requirements of this section have been followed.

(3) A AAA must ensure that the service provider submits the written report of such monitoring to the AAA.

(u) Weather-related emergencies, fire, and other disasters. A AAA must ensure that a service provider:

(1) keeps facilities and equipment available for emergencies and disasters, in accordance with a plan developed by the service provider, that gives priority to program participants 60 years of age or older;

(2) adopts written procedures ensuring the availability of food for program participants in emergencies and disasters; and

(3) promptly notifies the Department of State Health Services and the AAA of a food-borne disease outbreak, (that is, two or more cases of a similar illness resulting from the ingestion of a common food).

(v) Subcontracting by a service provider. A AAA must require a service provider to obtain written approval from the AAA before the service provider contracts with any entity for meal preparation or service delivery.

#### §85.306. *Adult Day Services.*

(a) This section establishes the requirements for adult day services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure that a program participant who receives adult day services:

(1) is:

(A) 60 years of age or older; and

(B) at least moderately impaired in the ability to perform instrumental or ordinary activities of daily living; or

(2) is qualified to receive services under Title III, Part E, of the Older Americans Act.

(c) Requirement for licensed vendor to provide services. A AAA must enter into a vendor agreement for the provision of adult day services with an adult day care facility licensed in accordance with §98.11 of this title (relating to Criteria for Licensing).

(d) Service authorization. Before adult day services are provided by a vendor to a program participant, a AAA must ensure that the vendor obtains authorization for the services from the AAA in ac-

cordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Description of adult day services. Adult day services consist of nursing services, physical rehabilitative services, nutrition services, socialization activities, and transportation services.

(1) Nursing services. Nursing services must include:

(A) assessing, observing, evaluating, and documenting a program participant's health condition, and instituting appropriate nursing interventions to stabilize or improve a program participant's condition or prevent complications;

(B) assisting a program participant with self-administered medications including, but not limited to, ordering, maintaining, or administering the medications as directed by a physician or other health care practitioner acting within the scope of the practitioner's authority and license;

(C) assisting a program participant with medical treatments, as directed by a physician or other health care practitioner acting within the scope of the practitioner's authority and license;

(D) counseling a program participant on the program participant's health needs and involving family members and caregivers in the discussions regarding immediate and long-term health goals; and

(E) providing or supervising personal day services to enable a program participant to restore, maintain, or improve the ability to perform activities of daily living and instrumental activities of daily living as defined in DADS Program Instruction AAA-PI-310 *Activities of Daily Living/Instrumental Activities of Daily Living NAPIS Mapping Requirements*.

(2) Physical rehabilitative services. Physical rehabilitative services must include:

(A) restorative nursing; and

(B) group and individual exercises, including range of motion exercises.

(3) Nutrition services. Nutrition services must include:

(A) one hot meal served between the hours of 10:30 a.m. and 1:30 p.m. that:

(i) is suitable in quantity and adequacy to attain and maintain nutritional requirements, including those of a special needs program participant; and

(ii) consists of at least two ounces of meat, one-half cup of fruit or vegetables, one cup of milk, and two servings of bread;

(B) special diets as required by a program participant's plan of care;

(C) a supplementary mid-morning and mid-afternoon snack;

(D) dietary counseling and nutrition education for a program participant and family member; and

(E) assisting with meals, if necessary, for program participants with hand deformities, paralysis, hand tremors, or trouble chewing, including:

(i) grinding meats and mashing vegetables; and

(ii) spoon feeding, bread buttering, and opening containers such as milk or juice.

(4) Socialization activities. Socialization activities are community interaction, cultural enrichment, educational, recreational, or other social activities held in the vendor's facility or in the community in a planned program to meet the social needs and interests of a program participant. A AAA must ensure that a service provider:

(A) provides at least three social activities each day; and

(B) posts a monthly activity calendar in a visible location at least one week in advance of the activities listed.

(5) Transportation services.

(A) Transportation services must include:

(i) round trip transportation to a vendor's facility from a program participant's residence; and

(ii) round trip transportation from a vendor's facility to medical appointments ordered by a physician or other health care practitioner acting within the scope of the practitioner's authority and license if it is necessary for a program participant to attend such therapies or appointments while at the facility.

(B) If a vendor does not provide transportation directly, it must arrange for transportation from another person or organization.

(C) A vehicle used for transportation services must be properly operated and maintained and have proper heating and cooling systems to maintain reasonable temperature levels inside the vehicle.

(f) Staff qualifications. A AAA must ensure that staff persons of a service provider meet the qualifications described in §98.62(a) of this title (relating to Program Requirements).

§85.307. *Emergency Response Services.*

(a) Purpose. This section establishes the requirements for ERS, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure that a program participant who receives emergency response services:

(1) is 60 years of age or older;

(2) meets at least one of the following criteria:

(A) lives alone;

(B) is routinely alone for eight or more hours during a 24-hour period; or

(C) lives with an incapacitated person who is not able to call for help or otherwise assist in an emergency;

(3) lives in a place other than an LTC facility, personal care home, foster care setting, or any other institutional setting where 24-hour supervision is available; and

(4) is at risk, such as being prone to falling or having an existing medical condition that may be life-threatening if the program participant does not receive immediate assistance.

(c) Requirement for licensed vendor to provide services. A AAA must enter into a vendor agreement for the provision of ERS with an entity licensed:

(1) by the Public Security Bureau of the Texas Department of Public Safety as an alarms systems company; or

(2) by the Department of State Health Services as a personal emergency response system provider.

(d) Service authorization. Before ERS are provided by a vendor to a program participant, a AAA must ensure that the vendor ob-

tains authorization for the services from the AAA in accordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Service activities. A AAA must ensure that the vendor:

(1) coordinates and oversees the installation and management of the electronic monitoring system;

(2) initiates services within 14 days after the service effective date on the authorization, unless prohibited by factors beyond its control such as a natural disaster; and

(3) if a program participant is not available to receive services during the time frame described in paragraph (2) of this subsection, initiates services within 72 hours after being notified the program participant is available.

(f) Responder requirements.

(1) A AAA must, before emergency response services are initiated, obtain or must ensure that a vendor obtains from the program participant as many names, as possible, of persons who will serve as responders.

(2) A AAA must designate or must ensure that a vendor designates public service personnel as the responder of last resort for each program participant.

(g) Prerequisites to service. A AAA must ensure that, before initiating ERS, a vendor:

(1) ensures the program participant:

(A) has the capacity to properly operate the electronic monitoring system;

(B) has a telephone with a private line, if the electronic monitoring system requires a private line to function properly; and

(C) signs a release statement allowing a responder to make a forced entry into the program participant's residence to respond to an activated alarm call when there are no other means of entering the residence;

(2) installs the electronic monitoring system;

(3) trains a program participant on the use of the electronic monitoring system, including:

(A) demonstrating to the program participant how the system works; and

(B) demonstrating to the program participant how to activate an alarm call; and

(4) explains to a program participant:

(A) that the program participant must participate in a system check each month;

(B) that the program participant must contact a service provider if:

(i) the program participant's telephone number or address changes; or

(ii) one or more of the program participant's responders changes;

(C) that the program participant must not willfully abuse or damage the electronic monitoring system;

(D) that a responder may forcibly enter a program participant's residence if necessary; and

(E) the procedures for filing a grievance against a service provider.

(h) Program participant file. A AAA must ensure that a vendor maintains a file for each program participant that includes:

(1) the name, telephone number, address, and medical condition of the program participant;

(2) the name and telephone number of the program participant's physician or primary health care provider;

(3) the name and telephone number of each responder;

(4) a record of all completed and attempted system checks;

(5) a record of each alarm call;

(6) a copy of all required notices sent to the AAA;

(7) a signed release as required by subsection (g)(1)(C) of this section;

(8) the program participant's acknowledgment the equipment belongs to the vendor;

(9) if applicable, documentation showing approval from the AAA for the continuation of ERS after the time period authorized in accordance with subsection (d) of this section; and

(10) if applicable, documentation stating that service delivery was suspended and the reason for the suspension.

(i) Service delivery. A AAA must ensure that a vendor authorized to provide ERS:

(1) is available and able to respond to an alarm call from a program participant 24 hours a day, seven days a week; and

(2) in response to an alarm call:

(A) attempts to contact the program participant, within one minute of the call, to verify an emergency exists before contacting a responder;

(B) immediately contacts a responder if:

(i) the program participant verifies there is an emergency; or

(ii) the vendor is unable to reach the program participant;

(C) documents an alarm call at the time it is received and after it is resolved and includes:

(i) the name of the program participant;

(ii) the date and time an alarm call is received, recorded in hours, minutes, and seconds;

(iii) the time a monitor called the program participant in response to an alarm call, recorded in hours, minutes, and seconds;

(iv) the name of the contacted responder;

(v) a brief description of the incident; and

(vi) a statement of how the incident was resolved;

(3) notifies the responder within 24 hours after becoming aware of a significant change in the program participant's condition; and

(4) notifies the AAA, in writing, of any significant change in a program participant's environment within seven days after becoming aware of the change, including:

(A) a change of address; and

(B) a change in the circumstances described in subsection (b)(2) of this section.

(j) System checks. A AAA must ensure that a vendor:

(1) conducts a system check by activating the call button to test the electronic monitoring system at least once during each calendar month;

(2) documents a completed system check, including the date and time of a completed system check;

(3) completes a system check three times on three different days within one week if a system check fails to activate the electronic monitoring system;

(4) contacts a responder or caregiver (other than public service personnel) to conduct a system check if the vendor is unable to complete a system check after three attempts to schedule with the program participant; and

(5) if unable to conduct a system check, notifies the AAA in writing within 10 days after:

(A) the date and time of each attempted system check;

(B) the date and time of each attempt to contact a responder other than public service personnel; and

(C) the reason the program participant was unable to participate.

(k) Equipment maintenance. A AAA must ensure that a vendor:

(1) replaces or repairs faulty equipment in the program participant's electronic monitoring system within one business day after learning of the faulty equipment if the program participant is available to permit such repair or replacement;

(2) if the program participant is not available as described in paragraph (1) of this subsection, replaces or repairs the equipment as soon as the program participant is available;

(3) instructs the program participant or caregiver in replacing a battery;

(4) visits a program participant's residence to check the electronic monitoring system equipment within five business days after the equipment has registered five or more "low battery" signals in a 72-hour period and replaces the defective battery during the visit, if necessary; and

(5) documents and maintains a record of each instance of faulty equipment and low battery signal and includes in the documentation:

(A) the date the vendor became aware of the faulty equipment or low battery signal;

(B) the equipment or subscriber number;

(C) a description of the problem; and

(D) the date the entire equipment or a part of it was repaired or replaced.

(l) Suspension and termination of services. A AAA must ensure that a vendor:

(1) suspends services before the end of the authorization period and removes the equipment from a program participant's residence, if the vendor becomes aware that:

(A) the program participant moves to an area where the vendor does not provide services or that is not in the AAA's planning and service area;

(B) the program participant is admitted to an LTC facility, personal care home, foster care setting, or any other institutional setting where 24-hour supervision is available;

(C) the program participant moves to a noninstitutional residence and the requirements in subsection (b)(2) of this section are not met;

(D) the program participant dies; or

(E) the program participant requests for services to be terminated; and

(2) if services are suspended and equipment removed from a program participant's residence in accordance with paragraph (1) of this subsection:

(A) notifies the AAA within the next business day after such removal; and

(B) sends a case information form requesting service termination to the AAA within seven days after the notification.

(m) Special reporting considerations. A AAA must ensure that a vendor notifies the AAA of any of the following events within one business day of learning that:

(1) a program participant activated:

(A) four false alarms that result in a response by fire department, police, sheriff, or ambulance personnel within a six-month period; or

(B) 20 false alarms of any kind within a six-month period;

(2) the program participant is away from the residence or is unable to participate in the service delivery for three consecutive months or more; or

(3) the program participant is no longer able to operate the electronic monitoring system properly.

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 August 12, 2008.

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Kenneth L. Owens

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER E. LONG-TERM CARE OMBUDSMAN PROGRAM

### 40 TAC §85.401

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including



DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§85.401. *Long-Term Care Ombudsman Program.*

(a) Purpose. This section establishes the requirements of the Long-Term Care Ombudsman Program, a program established under the Older Americans Act, §712 and funded, in whole or in part, by DADS.

(b) Designation.

(1) DADS designates AAAs as local ombudsman entities.

(2) A AAA may contract with a nonprofit organization to perform the duties of the local ombudsman entity, as described in this section, in the AAA's planning and service area.

(3) The requirements of this section apply to a AAA in its role as the local ombudsman entity.

(c) Description of program. The Long-Term Care Ombudsman Program provides services to protect the health, safety, welfare, and rights of residents. Such services include investigating and resolving complaints made by or on behalf of such residents, providing assistance and information to persons in choosing an LTC facility, and promoting a variety of means to ensure that residents' rights are protected, including conducting training programs and supporting the development of resident and family councils that advise LTC facilities.

(d) Eligibility.

(1) Except as provided in paragraph (2) of this subsection, a AAA must ensure that a program participant who receives services from the Long-Term Care Ombudsman Program is a resident and 60 years of age or older.

(2) A AAA may respond to a complaint of a resident who is under 60 years of age if such response:

(A) benefits the residents of that facility or residents of other LTC facilities who are 60 years of age or older; and

(B) will not significantly diminish the effectiveness of the Long-Term Care Ombudsman Program in assisting residents who are 60 years of age or older.

(e) Managing local ombudsman. A AAA must appoint a certified staff ombudsman to act as a managing local ombudsman. The managing local ombudsman must:

(1) oversee the administration of the Long-Term Care Ombudsman Program in the AAA's planning and service area; and

(2) be the primary contact for the local ombudsman entity.

(f) Adequate number of certified ombudsman. In order to implement the Long-Term Care Ombudsman Program as described in this section, a AAA:

(1) must have an adequate number of certified ombudsmen; and

(2) may have friendly visitors.

(g) Qualifications for certified ombudsmen and friendly visitors.

(1) A person may be a certified ombudsman only if:

(A) the person has not been convicted of an offense listed under Texas Health and Safety Code, §250.006;

(B) the person successfully completes a certification training provided by the AAA in accordance with DADS Ombudsman Certification Training Manual;

(C) for a certified volunteer ombudsman, the person successfully completes an internship in accordance with DADS Ombudsman Policies and Procedures Manual;

(D) the AAA recommends to the Office, in writing, using DADS *Certified Ombudsman Application*, that the person be approved as a certified ombudsman;

(E) the Office signs the DADS *Certified Ombudsman Application* approving the person to be a certified ombudsman; and

(F) the person completes continuing education provided by the AAA in accordance with DADS Ombudsman Policies and Procedures Manual.

(2) A person may be a friendly visitor only if the person successfully completes an orientation provided by the AAA in accordance with DADS Ombudsman Policies and Procedures Manual.

(h) Access to residents and records.

(1) In accordance with §19.413 of this title (relating to Access and Visitation Rights) and §92.801 of this title (relating to Access to Residents and Records by the Long-Term Care Ombudsman Program), a representative of the Office, as described in subsection (r) of this section, is entitled to immediate access to a resident.

(2) In accordance with §19.413 of this title and §92.801 of this title a certified ombudsman and a staff person of the Office are entitled to access:

(A) the medical and social records of a resident, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident;

(B) the medical and social records of a resident 60 years of age or older, if such access is necessary to investigate a complaint made to the Long-Term Care Ombudsman Program and:

(i) the resident is unable to consent to access and has no legally authorized representative; or

(ii) the following circumstances occur:

(I) the legal guardian of the resident refuses to give consent for access to the records;

(II) the certified ombudsman or staff person of the Office has reasonable cause to believe that the guardian is not acting in the best interest of the resident; and

(III) the certified ombudsman or staff person of the Office obtains the approval of the State Long-Term Care Ombudsman to access the records without the guardian's consent; and

(C) to the administrative records, policies and documents of the LTC facility to which the residents or general public have access.

(i) Conflict of interest and identity of certain relationships.

(1) A AAA must ensure that a certified ombudsman, an ombudsman intern, and a member of the immediate family of the managing local ombudsman are not subject to a conflict of interest.

(2) A conflict of interest includes the following:

(A) having a direct involvement in the licensing or certification of an LTC facility or of a home and community support services agency (HCSSA) licensed to provide home health services or hospice services in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(B) having an ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility or a HCSSA licensed to provide home health services or hospice services in accordance with Chapter 97 of this title;

(C) being employed by, or participating in the management of, an LTC facility or a HCSSA licensed to provide home health services or hospice services in accordance with Chapter 97 of this title;

(D) receiving, or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility or a HCSSA licensed to provide home health services or hospice services in accordance with Chapter 97 of this title; and

(E) a certified ombudsman or ombudsman intern having a relative who is a resident in or an employee of an LTC facility in which the certified ombudsman or ombudsman intern provides Long-Term Care Ombudsman Program services.

(3) a conflict of interest described in paragraph (2)(A) - (D) of this subsection exists only if an LTC facility is in a AAA's planning and service area or a HCSSA is providing services to an LTC facility in a AAA's planning and service area.

(4) A AAA must specify, in writing, the mechanisms to:

(A) identify and remove conflicts of interest; and

(B) identify and address, if necessary, a familial or personal relationship that a certified ombudsman or ombudsman intern has with:

(i) a staff person of an LTC facility in the AAA's planning and service area; or

(ii) a staff person of DADS.

(j) Complaints. A AAA must:

(1) ensure that a person is allowed to make a complaint about circumstances that may adversely affect the health, safety, welfare, or rights of a resident in the following ways:

(A) in writing, including by electronic mail;

(B) in person; and

(C) by telephone, either by:

(i) a toll-free telephone number established by the AAA; or

(ii) acceptance by the AAA of a collect telephone call;

(2) initiate a complaint if the AAA becomes aware of circumstances that may adversely affect the health, safety, welfare, or rights of a resident;

(3) unless a complaint is initiated by the AAA in accordance with paragraph (2) of this subsection, respond to the person who makes a complaint, within two business days after receipt of the complaint or sooner, if possible, if the complaint presents an emergency situation;

(4) require a certified ombudsman to initiate an investigation of a complaint as soon as practicable after receipt of the complaint;

(5) require a certified ombudsman to investigate and resolve a complaint in a fair and objective manner; and

(6) report information about complaints to DADS in accordance with instructions promulgated by the Office.

(k) Disclosure of information.

(1) For a resident for whom a AAA maintains files or records, the AAA may disclose confidential information, including the identity of the resident or information from the files or records, only if:

(A) the resident or legally authorized representative consents to the disclosure in writing;

(B) the resident or legally authorized representative consents to the disclosure orally and the consent is documented by a certified ombudsman, in writing, at the time the oral consent is given; or

(C) the disclosure is required by court order.

(2) A AAA may disclose the identity of a person who files a complaint only if:

(A) the complainant, or legally authorized representative of the complainant, consents to the disclosure in writing;

(B) the complainant, or legally authorized representative, consents to the disclosure orally and the consent is documented by a certified ombudsman, in writing, at the time the oral consent is given; or

(C) the disclosure is required by court order.

(3) A AAA must disclose Long-Term Care Ombudsman Program information, other than the information described in paragraphs (1) and (2) of this subsection, in accordance with Texas Government Code, Chapter 552 (the Public Information Act).

(l) Representation of residents. A AAA may represent the interests of a resident before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the resident, if requested by a resident or another person on behalf of the resident.

(m) Review of proposed laws, regulations, and policies. A AAA may review and comment on existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of a resident; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions.

(n) Community relations. A AAA must:

(1) ensure that the local Ombudsman entity is visible within a AAA's planning and service area;

(2) coordinate with public and private organizations to involve residents in the community;

(3) be a knowledgeable resource about:

(A) community services and supports for residents;

(B) LTC facilities (including having information about facility operations and Ombudsman complaint history) without recommending a specific facility;

(C) DADS regulatory system regarding LTC facilities; and

(D) resident-centered care (that is, care based on a resident's needs, choices, and preferences);

(4) provide training to LTC facility staff regarding quality of care provided to residents as requested by a facility;

(5) support the development of resident and family councils in LTC facilities; and

(6) coordinate with DADS Regulatory Services, at least quarterly, and the Department of Family and Protective Services, as needed, to resolve issues regarding LTC facility operations and the quality of care for and the quality of life of residents.

(o) Recruitment, supervision, and retention of certified volunteer ombudsmen. If a AAA determines that certified volunteer ombudsmen are needed, the AAA must:

(1) determine the number of certified volunteer ombudsmen needed to comply with DADS performance measures;

(2) make a good faith effort to recruit the number of certified volunteer ombudsmen needed;

(3) ensure that a certified volunteer ombudsman meets the qualifications described in subsection (g) of this section and is not subject to a conflict of interest as described in subsection (i) of this section;

(4) supervise and routinely communicate with a certified volunteer ombudsman to:

(A) monitor performance;

(B) support effective volunteer conduct; and

(C) identify training needs; and

(5) promote retention of a certified volunteer ombudsman by:

(A) providing continuing education in accordance with subsection (g)(1)(F) of this section;

(B) providing recognition and motivational activities;

(C) conducting annual evaluations; and

(D) conducting exit evaluations for a certified volunteer ombudsman leaving volunteer service.

(p) Grievance procedures for certified volunteer ombudsmen and friendly visitors. A AAA must have a process that:

(1) allows a certified volunteer ombudsman or friendly visitor to file a grievance with the AAA regarding the Long-Term Care Ombudsman Program; and

(2) requires a staff person of the AAA to review and resolve the grievance.

(q) Compliance with documents of the Office. A AAA must comply with the following documents promulgated by the Office:

(1) DADS Ombudsman performance measures;

(2) DADS Ombudsman Policies and Procedures Manual;

(3) DADS Program Instructions; and

(4) DADS Ombudsman Certification Training Manual.

(r) Representatives of the Office. In accordance with Texas Human Resources Code, §101.051(4), DADS designates the following persons as representatives of the Office:

(1) staff persons of the Office;

(2) certified ombudsmen; and

(3) ombudsman interns.

(s) Contractor compliance. If a AAA contracts with a non-profit organization as described in subsection (b) of this section, the AAA must ensure that the organization complies with the requirements for a AAA described in this section.

(t) Ombudsman maintenance of effort.

(1) A AAA must comply with the Older Americans Act, §306(a)(9) regarding adequate expenditures for the Long-Term Care Ombudsman Program.

(2) A AAA may request, in writing, by September 30 of each year, that DADS waive the requirement described in paragraph (1) of this subsection for the next federal year.

(3) DADS may grant such a request if the AAA demonstrates adequate justification.

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

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

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**CHAPTER 92. LICENSING STANDARDS FOR  
ASSISTED LIVING FACILITIES  
SUBCHAPTER I. ACCESS TO RESIDENTS  
AND RECORDS BY THE LONG-TERM CARE  
OMBUDSMAN PROGRAM**

**40 TAC §92.801**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §92.801 in Chapter 92, Licensing Standards for Assisted Living Facilities, with changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3248).

The new section is adopted to update DADS rules to be consistent with §712(b) of the Older Americans Act of 1965, as amended in 2006. Section 712(b) requires the State to ensure that certified ombudsmen and staff of the Office of the State Long-Term Care Ombudsman have appropriate access to residents of assisted living facilities and to the residents' records when necessary to investigate complaints. DADS rules currently do not require an assisted living facility to allow certified ombudsmen access to residents or to a resident's record, although access is mandated by federal law. The new section is adopted to clarify the rights of residents in assisted living facilities and the responsibilities of an assisted living facility under the federal law.

DADS received no comments regarding adoption of the new section.

Changes were made to the text of §92.801 to clarify and improve the accuracy of the section.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

§92.801. *Access to Residents and Records by the Long-Term Care Ombudsman Program.*

(a) A resident has the right to be visited by, and a facility must provide immediate access to any resident to:

- (1) a staff person of the Office of the State Long-Term Care Ombudsman (the Office) employed by DADS;
- (2) a certified ombudsman; and
- (3) an ombudsman intern.

(b) A facility must allow a certified ombudsman and a staff person of the Office access:

- (1) to the medical and social records of a resident, if the certified ombudsman or the staff person has the consent of the resident or the legally authorized representative of the resident;
- (2) to the medical and social records of a resident 60 years of age or older, in accordance with the Older Americans Act, §712(b); and
- (3) to the administrative records, policies, and documents of the facility to which the facility residents or general public have access.

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 August 11, 2008.

TRD-200804287

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: April 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §§93.1 - 93.4, 93.11 - 93.13, 93.21 - 93.23, 93.31 - 93.34, 93.41 - 93.48, and 93.61 - 93.63; and new §§93.1 - 93.9, in Chapter 93, Employee Misconduct Registry (EMR). New §93.8 is adopted with changes to the proposed text published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3249). The repeal of §§93.1 - 93.4, 93.11 - 93.13, 93.21 - 93.23, 93.31

- 93.34, 93.41 - 93.48, and 93.61 - 93.63, and new §§93.1 - 93.7 and 93.9 are adopted without changes to the proposed text.

The repeal and new sections are adopted to update DADS rules to be consistent with Senate Bill (SB) 1318, 80th Legislature, Regular Session, 2007, which amended Texas Health and Safety Code, §142.009, to give the responsibility for investigating allegations of abuse, neglect, and exploitation of children by home and community support services agency employees to DADS. Part of the implementation of this new responsibility required the reorganization of DADS' rules governing the EMR, established in accordance with Texas Health and Safety Code, Chapter 253.

The adopted EMR rules will be clearer and easier for the public to use and understand and more consistent with other Health and Human Services Enterprise rules.

DADS received a written comment from the Texas Association for Home Care. A summary of the comment and the response follows.

Comment: One commenter requested a change in §93.8(a)(3) to add the term "agency" to provide for the inclusion of both facilities and provider agencies in the rule.

Response: The agency agrees with the comment and has inserted the term "agency" in §93.8(a)(3).

### 40 TAC §§93.1 - 93.9

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

§93.8. *Entering Information in the EMR.*

(a) DADS records an employee's name and related information in the EMR:

(1) when all due process procedures are completed and a finding of reportable conduct is substantiated by DADS;

(2) as required by Texas Health and Safety Code, §253.0075, when DADS receives notice of substantiated findings from the Department of Family and Protective Services; and

(3) if an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, DADS may make a record in the EMR of the employee's name, the employee's address, the employee's social security number, the name of the facility or agency, the address of the facility or agency, the date of the act, and a description of the act.

(b) The following information is entered in the EMR:

- (1) the employee's name;
- (2) the employee's address;
- (3) the employee's social security number;
- (4) the name of the facility or agency;
- (5) the address of the facility or agency;

- (6) the date of the act of reportable conduct; and
- (7) a description of the act of reportable conduct.

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 August 12, 2008.

TRD-200804330  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: September 1, 2008  
Proposal publication date: April 18, 2008  
For further information, please call: (512) 438-3734



## SUBCHAPTER A. INTRODUCTION

### 40 TAC §§93.1 - 93.4

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

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 August 12, 2008.

TRD-200804331  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: September 1, 2008  
Proposal publication date: April 18, 2008  
For further information, please call: (512) 438-3734



## SUBCHAPTER B. EMR USE REQUIREMENTS

### 40 TAC §§93.11 - 93.13

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

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 August 12, 2008.

TRD-200804332  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: September 1, 2008  
Proposal publication date: April 18, 2008  
For further information, please call: (512) 438-3734



## SUBCHAPTER C. PROCESS FOR FACILITY REFERRALS

### 40 TAC §§93.21 - 93.23

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

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 August 12, 2008.

TRD-200804333  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: September 1, 2008  
Proposal publication date: April 18, 2008  
For further information, please call: (512) 438-3734



## SUBCHAPTER D. PROCESS FOR AGENCY REFERRALS

### 40 TAC §§93.31 - 93.34

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

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 August 12, 2008.

TRD-200804334

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: April 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER E. DETERMINATION OF REPORTABLE CONDUCT, INFORMAL REVIEW, AND FORMAL HEARING FOR FACILITY REFERRALS

### 40 TAC §§93.41 - 93.48

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

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 August 12, 2008.

TRD-200804335

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: April 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER F. RECORDABLE INFORMATION IN THE EMR

### 40 TAC §§93.61 - 93.63

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated

by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

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 August 12, 2008.

TRD-200804336

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: April 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 100. MISCELLANEOUS SUBCHAPTER A. OPERATION OF THE TEXAS DEPARTMENT ON AGING

### 40 TAC §100.1, §100.3

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §100.1 and §100.3 in Chapter 100 without changes to the proposal as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3254).

HHSC, on behalf of DADS, is adopting new rules that govern area agencies on aging and implementation of the Older Americans Act of 1965, as amended in 2006, elsewhere in this issue of the *Texas Register*. As part of the adoption of rewritten and reorganized rules in Chapter 85, DADS adopts the repeal of obsolete rules in Chapter 100 that are no longer required in the rule base.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 August 12, 2008.

TRD-200804351

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: April 18, 2008

For further information, please call: (512) 438-3734



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Agency Rule Review Plan

Texas Board of Architectural Examiners

### Title 22, Part 1

TRD-200804462

Filed: August 19, 2008



## Proposed Rule Reviews

Texas Board of Architectural Examiners

### Title 22, Part 1

The Texas Board of Architectural Examiners will review and consider for readoption, revision, or repeal Title 22 Texas Administrative Code, Part 1, Chapter 1, Architects; Chapter 3, Landscape Architects; Chapter 5, Interior Designers; and Chapter 7, Administration. This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 30 days to Cathy L. Hendricks, AISD/IIDA/RID, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin TX 78711 or faxed to her attention at (512) 305-8900. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-200804463

Cathy L. Hendricks, AISD/IIDA/RID

Executive Director

Texas Board of Architectural Examiners

Filed: August 19, 2008



Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-200804386

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: August 14, 2008



The Texas Board of Criminal Justice (TDCJ) files this notice of intent to review §155.21, concerning Naming of TDCJ Owned Facilities. This review is being conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-200804387

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: August 14, 2008



The Texas Board of Criminal Justice files this notice of intent to review §159.9, concerning Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-200804388

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: August 14, 2008



Texas Facilities Commission

**Title 1, Part 5**

In accordance with Texas Government Code, §2001.039, the Texas Facilities Commission (the Commission) proposes to review its administrative rules contained in Texas Administrative Code, Title 1, Part 5, Chapter 126, entitled Surplus and Salvage Property Programs.

Chapter 126 relates to the Commission's State and Federal Surplus and Salvage Property Program, including definitions; methods of disposal; notices of availability; priority transfer to a state agency; disposition of surplus or salvage data processing equipment; fees; delegation of authority to state agencies; firearms; compilation of a list of qualified buyers; disposition to the public by competitive bidding, auction or direct sale; reporting requirements; forfeiture; purchaser's title; handling of proceeds; purchase of chairs; and donation, cost recovery, and public auction with respect to Federal surplus and salvage property.

As required by Texas Government Code §2001.039, the Commission conducts this review to determine whether the statutory authority and the business reasons for Chapter 126 continue to exist.

Comments on the proposals may be submitted to Kay Molina, General Counsel, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via electronic mail to [rulescomments@tfc.state.tx.us](mailto:rulescomments@tfc.state.tx.us) and should state "Proposed Rule Review Ch. 126" in the subject line of e-mailed comments. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

TRD-200804503  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: August 20, 2008



Texas Board of Pardons and Paroles

**Title 37, Part 5**

Under the 1997 General Appropriations Act, Article IX, §167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 143, Executive Clemency, Subchapter F, Remission of Fines and Forfeitures, §143.73, Remission of Bond Forfeiture.

The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for readopting the section under review continues to exist. The proposed rule will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.state.tx.us](mailto:bettie.wells@tdcj.state.tx.us).

TRD-200804474  
Bettie Wells  
General Counsel  
Texas Board of Pardons and Paroles  
Filed: August 19, 2008

**Adopted Rule Reviews**

Texas Department of Criminal Justice

**Title 37, Part 6**

The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §151.21, concerning the Weapons Policy, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §151.21 continue to exist, and it readopts the section.

Notice of the review was published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4531). No comments were received as a result of that notice.

As a result of the rule review, TDCJ published proposed amendments to §151.21 in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4657). The Board adopted the amended rule and the adoption notice is published in this issue of the *Texas Register*.

TRD-200804380  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: August 14, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §151.73, concerning Texas Board of Criminal Justice Vehicle Assignments, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §151.73 continue to exist, and it readopts the section.

Notice of the review was published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4531). No comments were received as a result of that notice.

As a result of the rule review, TDCJ published proposed amendments to §151.73 in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4658). The Board adopted the amended rule and the adoption notice is published in this issue of the *Texas Register*.

TRD-200804381  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: August 14, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §152.61, concerning Emergency Response to Municipal, County, State or Federal Law Enforcement Agencies and Non-Agent Private Prisons/Jails, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §152.61 continue to exist, and it readopts the section.

Notice of the review was published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4531). No comments were received as a result of that notice.

As a result of the rule review, TDCJ published proposed amendments to §152.61 in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4659). The Board adopted the amended rule and the adoption notice is published in this issue of the *Texas Register*.

TRD-200804382



Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: August 14, 2008



Employees Retirement System of Texas

**Title 34, Part 4**

Pursuant to the notice of the proposed rule review that was published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4909), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 79, Social Security, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting the rules in Chapter 79 continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting the rules in 34 TAC Chapter 79 continue to exist, and therefore, the Board readopts Chapter 79. This completes ERS' review of 34 TAC Chapter 79, Social Security.

TRD-200804502  
Paula A. Jones  
General Counsel  
Employees Retirement System of Texas  
Filed: August 20, 2008



Texas State Board of Pharmacy

**Title 22, Part 15**

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.71 - 291.76), concerning Institutional Pharmacy (Class C), pur-

suant to the Texas Government Code §2001.039, regarding agency review of Existing Rules. The proposed review as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4909).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-200804423  
Gay Dodson, R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy  
Filed: August 18, 2008



The Texas State Board of Pharmacy adopts the review of Chapter 303 (§§303.1 - 303.3), concerning Destruction of Dangerous Drugs and Controlled Substances, pursuant to the Texas Government Code §2001.039, regarding agency review of Existing Rules. The proposed review as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4909).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-200804422  
Gay Dodson, R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy  
Filed: August 18, 2008



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC Chapter 25--Preamble

<b>Utility</b>	<b>Months in which filing could be made</b>		
El Paso Electric Company	February	June	October
Entergy Texas, Inc.	March	July	November
Southwestern Public Service Company	April	August	December
Southwestern Electric Power Company	May	September	January

Figure: 16 TAC §25.475(h)(6)

Electricity Facts Label (EFL)				
[Name of REP], [Name of Product], [Service area (if applicable)],				
[Date]				
<b>Electricity price</b>	Average Monthly Use	500kWh	1,500kWh	2,500 kWh
	Average price per kWh	[x.x]¢	[x.x]¢	[x.x]¢
	For POLR use: Minimum price per kilowatt-hour.	[x.x]¢	[x.x]¢	[x.x]¢
	For promotional pricing: Additional line permitted for pricing in an additional way.			
	<p>This price disclosure is an example based on [criteria used to construct the example] - your average price for electric service will vary according to [relevant variation].</p> <p>[If applicable] On-peak [season or time]:[xxx]</p> <p>[If applicable] Average on-peak price per kilowatt-hour: [x.x]¢</p> <p>[If applicable] Average off-peak price per kilowatt-hour: [x.x]¢</p> <p>[If applicable] Potential surcharges corresponding to the given electric service.</p>			
<b>Other Key Terms and questions</b>	<p>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</p>			

<i>Disclosure Chart</i>	Type of Product	(guaranteed fixed, limited fixed or variable)
	Term/Contract Period	(number of months)
	Do I have a cancellation fee or any fees associated with cancelling or terminating service?	(yes/no) (if yes, how much)
	Can my price change during contract period?	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change)
	What other fees may I be charged?	(List, or give direct location in TOS.)
	Is this a pre-pay or pay in advance product	(yes/no)
	Renewable Content	(This product is x% renewable)
	The statewide average for renewable content is	(% of statewide average for renewable content)
<i>Additional information may be added below.</i>		

Type used in this format

Title: 12 point

Headings: 12 point boldface

Body: 10 point

Figure: 16 TAC §25.476(f)(7)(B)(ii)

SRR / TS,

where

SRR = the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period coinciding with the FMED [~~Electricity Facts Label disclosure~~], and

TS = total MWh sales for all REPs to Texas customers during the compliance period coinciding with the FMED [~~Electricity Facts Label disclosure~~].

Figure: 16 TAC §25.476(g)(4)

<b>Fuel Mix and Emissions Disclosure</b> [Name of REP], [Name of Product] [Service area (if applicable)] [Date]																							
<i>Sources of power generation</i>		<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 20%; text-align: center;"><i>This product</i></th> <th style="width: 20%; text-align: center;"><i>Texas (for comparison)</i></th> </tr> </thead> <tbody> <tr> <td>Coal and lignite</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Natural gas</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Nuclear</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Renewable energy</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Other</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: center;"><b>100%</b></td> <td style="text-align: center;"><b>100%</b></td> </tr> </tbody> </table>		<i>This product</i>	<i>Texas (for comparison)</i>	Coal and lignite	[xx]%	[xx]%	Natural gas	[xx]%	[xx]%	Nuclear	[xx]%	[xx]%	Renewable energy	[xx]%	[xx]%	Other	[xx]%	[xx]%	<b>Total</b>	<b>100%</b>	<b>100%</b>
	<i>This product</i>	<i>Texas (for comparison)</i>																					
Coal and lignite	[xx]%	[xx]%																					
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Other	[xx]%	[xx]%																					
<b>Total</b>	<b>100%</b>	<b>100%</b>																					
<i>Emissions and waste per 1,000 kWh generated</i>	<table style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 20%; text-align: center;">Better than Texas average</th> <th style="width: 20%; text-align: center;">Worse than Texas average</th> </tr> </thead> <tbody> <tr> <td>Carbon dioxide</td> <td style="text-align: center;">89</td> <td></td> </tr> <tr> <td>Nitrogen oxides</td> <td></td> <td style="text-align: center;">112</td> </tr> <tr> <td>Particulates</td> <td style="text-align: center;">56</td> <td></td> </tr> <tr> <td>Sulfur dioxide</td> <td style="text-align: center;">23</td> <td></td> </tr> <tr> <td>Nuclear waste</td> <td style="text-align: center;">10</td> <td></td> </tr> </tbody> </table> <p>(Indexed values; 100=Texas average)</p>			Better than Texas average	Worse than Texas average	Carbon dioxide	89		Nitrogen oxides		112	Particulates	56		Sulfur dioxide	23		Nuclear waste	10				
	Better than Texas average	Worse than Texas average																					
Carbon dioxide	89																						
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Particulates	56																						
Sulfur dioxide	23																						
Nuclear waste	10																						
<i>Optional: Sources of Renewable Generation</i>	<p>Optional: REP may use this section to disclose and explain specific sources of renewable generation.</p>																						

Type used in this format

Title: 12 point

Headings: 12 point boldface

Body: 10 point

Figure: 19 TAC §110.10(b)

19 TAC Chapter 110. Texas Essential Knowledge and Skills for English Language Arts and Reading  
 Subchapter A. Elementary  
 Reading/Comprehension Skills §110.11 - §110.16

<b>Kindergarten</b> (§110.11 English Language Arts and Reading)	<b>First Grade</b> (§110.12 English Language Arts and Reading)	<b>Second Grade</b> (§110.13 English Language Arts and Reading)	<b>Third Grade</b> (§110.14 English Language Arts and Reading)	<b>Fourth Grade</b> (§110.15 English Language Arts and Reading)	<b>Fifth Grade</b> (§110.16 English Language Arts and Reading)
Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:
(A) discuss the purposes for reading and listening to various texts (e.g., to become involved in real and imagined events, settings, actions, and to enjoy language);  (B) ask and respond to questions about text;	(A) establish purposes for reading selected texts based upon desired outcome to enhance comprehension;  (B) ask literal questions of text;	(A) establish purposes for reading selected texts based upon content to enhance comprehension;  (B) ask literal questions of text;	(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension;  (B) ask literal, interpretive, and evaluative questions of text;	(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension;  (B) ask literal, interpretive, and evaluative questions of text;	(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension;  (B) ask literal, interpretive, evaluative, and universal questions of text;

19 TAC Chapter 110. Texas Essential Knowledge and Skills for English Language Arts and Reading  
 Subchapter A. Elementary  
 Reading/Comprehension Skills §110.11 - §110.16

<b>Kindergarten</b> (§110.11 English Language Arts and Reading)	<b>First Grade</b> (§110.12 English Language Arts and Reading)	<b>Second Grade</b> (§110.13 English Language Arts and Reading)	<b>Third Grade</b> (§110.14 English Language Arts and Reading)	<b>Fourth Grade</b> (§110.15 English Language Arts and Reading)	<b>Fifth Grade</b> (§110.16 English Language Arts and Reading)
(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud);  (D) make inferences based on the cover, title, illustrations, and plot;  (E) retell or act out important events in stories; and  (F) make connections to own experiences, to ideas in other texts, and to the larger community and discuss textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud);  (D) make inferences about text and use textual evidence to support understanding;  (E) retell or act out important events in stories in logical order; and  (F) make connections to own experiences, to ideas in other texts, and to the larger community and discuss textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions);  (D) make inferences about text using textual evidence to support understanding;  (E) retell important events in stories in logical order; and  (F) make connections to own experiences, to ideas in other texts, and to the larger community and discuss textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions);  (D) make inferences about text and use textual evidence to support understanding;  (E) summarize information in text, maintaining meaning and logical order; and  (F) make connections (e.g., thematic links, author analysis) between literary and informational texts with similar ideas and provide textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions);  (D) make inferences about text and use textual evidence to support understanding;  (E) summarize information in text, maintaining meaning and logical order within a text and across texts; and  (F) make connections (e.g., thematic links, author analysis) between and across multiple texts of various genres and provide textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions);  (D) make inferences about text and use textual evidence to support understanding;  (E) summarize and paraphrase texts in ways that maintain meaning and logical order within a text and across texts; and  (F) make connections (e.g., thematic links, author analysis) between and across multiple texts of various genres and provide textual evidence.

Figure: 19 TAC §110.17(b)  
 19 TAC Chapter 110. Texas Essential Knowledge and Skills for English Language Arts and Reading  
 Subchapter B. Middle School  
 Reading/Comprehension Skills §110.18 - §110.20

<p><b>Sixth Grade</b>            (§110.18 <i>English Language Arts and Reading</i>)</p>	<p><b>Seventh Grade</b>            (§110.19 <i>English Language Arts and Reading</i>)</p>	<p><b>Eighth Grade</b>            (§110.20 <i>English Language Arts and Reading</i>)</p>
<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <ul style="list-style-type: none"> <li>(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension;</li> <li>(B) ask literal, interpretive, evaluative, and universal questions of text;</li> <li>(C) monitor and adjust comprehension (e.g., using background knowledge; creating sensory images; rereading a portion aloud; generating questions);</li> <li>(D) make inferences about text and use textual evidence to support understanding;</li> <li>(E) summarize, paraphrase, and synthesize texts in ways that maintain meaning and logical order within a text and across texts; and</li> <li>(F) make connections-(e.g., thematic links, author analysis) between and across multiple texts of various genres, and provide textual evidence.</li> </ul>	<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <ul style="list-style-type: none"> <li>(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension;</li> <li>(B) ask literal, interpretive, evaluative, and universal questions of text;</li> <li>(C) reflect on understanding to monitor comprehension (e.g., summarizing and synthesizing; making textual, personal, and world connections; creating sensory images);</li> <li>(D) make complex inferences about text and use textual evidence to support understanding;</li> <li>(E) summarize, paraphrase, and synthesize texts in ways that maintain meaning and logical order within a text and across texts; and</li> <li>(F) make connections between and across texts, including other media (e.g., film, play), and provide textual evidence.</li> </ul>	<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <ul style="list-style-type: none"> <li>(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension;</li> <li>(B) ask literal, interpretive, evaluative, and universal questions of text;</li> <li>(C) reflect on understanding to monitor comprehension (e.g., summarizing and synthesizing; making textual, personal, and world connections; creating sensory images);</li> <li>(D) make complex inferences about text and use textual evidence to support understanding;</li> <li>(E) summarize, paraphrase, and synthesize texts in ways that maintain meaning and logical order within a text and across texts; and</li> <li>(F) make intertextual links among and across texts, including other media (e.g., film, play), and provide textual evidence.</li> </ul>



Figure: 19 TAC §110.30(b)  
 19 TAC Chapter 110. Texas Essential Knowledge and Skills for English Language Arts and Reading  
 Subchapter C. High School  
 Reading/Comprehension Skills §110.31 - §110.34

<b>English I</b> (§110.31 <i>English Language Arts and Reading</i> )	<b>English II</b> (§110.32 <i>English Language Arts and Reading</i> )	<b>English III</b> (§110.33 <i>English Language Arts and Reading</i> )	<b>English IV</b> (§110.34 <i>English Language Arts and Reading</i> )
<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <p>(A) reflect on understanding to monitor comprehension (e.g., asking questions, summarizing and synthesizing, making connections, creating sensory images); and</p> <p>(B) make complex inferences about text and use textual evidence to support understanding.</p>	<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <p>(A) reflect on understanding to monitor comprehension (e.g., asking questions, summarizing and synthesizing, making connections, creating sensory images); and</p> <p>(B) make complex inferences about text and use textual evidence to support understanding.</p>	<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <p>(A) reflect on understanding to monitor comprehension (e.g., asking questions, summarizing and synthesizing, making connections, creating sensory images); and</p> <p>(B) make complex inferences (e.g., inductive and deductive) about text and use textual evidence to support understanding.</p>	<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <p>(A) reflect on understanding to monitor comprehension (e.g., asking questions, summarizing and synthesizing, making connections, creating sensory images); and</p> <p>(B) make complex inferences (e.g., inductive and deductive) about text and use textual evidence to support understanding.</p>

Figure: 22 TAC §7.10(b)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	\$100	\$100	\$100
Examination	1071****	***	**
Registration by Examination--Resident	155	*355	*355
Registration by Examination--Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal--Resident	*305	*305	*305
Active Renewal--Nonresident	*400	*400	*400
Active Renewal 1-90 days late--Resident	*457.50	*457.50	*457.50
Active Renewal greater than 90 days late--Resident	*610	*610	*610
Active Renewal 1-90 days late--Nonresident	*600	*600	*600
Active Renewal greater than 90 days late--Nonresident	*800	*800	*800
Emeritus Renewal--Resident	10	10	10
Emeritus Renewal--Nonresident	10	10	10
Emeritus Renewal 1-90 days late--Resident	15	15	15
Emeritus Renewal greater than 90 days late--Resident	20	20	20
Emeritus Renewal 1-90 days late--Nonresident	15	15	15
Emeritus Renewal greater than 90 days late--Nonresident	20	20	20
Inactive Renewal--Resident	25	25	25
Inactive Renewal--Nonresident	125	125	125
Inactive Renewal 1-90 days late--Resident	37.50	37.50	37.50
Inactive Renewal greater than 90 days late--Resident	50	50	50
Inactive Renewal 1-90 days late--Nonresident	187.50	187.50	187.50
Inactive Renewal greater than 90 days late--Nonresident	250	250	250
Reciprocal Reinstatement	610	610	610
Change in Status--Resident	65	65	65
Change in Status--Nonresident	95	95	95
Reinstatement--Resident	685	685	685
Reinstatement--Nonresident	775	775	775
Certificate of Standing--Resident	30	30	30
Certificate of Standing--Nonresident	40	40	40
Replacement or Duplicate Wall Certificate--Resident	40	40	40
Replacement of Duplicate Wall Certificate--Nonresident	90	90	90
Duplicate Pocket Card	0	0	0
Reopen Fee for closed candidate files	25	25	25
Examination--Administrative Fee	-	40	-
Examination--Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1 Hour LARE Review	-	17	-

\*These fees include a \$200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the \$200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

\*\*NCIDQ fee: 2008--\$720, 2009--\$730. Specified amounts are maximum estimates made by NCIDQ, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

\*\*\*LARE fee: Fiscal Year 2008--\$935, Fiscal Year 2009--\$950. Specified amounts are estimates made by CLARB, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

\*\*\*\*Fee for ARE Version 3.1. The fee for ARE 4.0 which is available July 2008 is \$1190.

Figure: 25 TAC §289.201(b)(103)(B)

$$\frac{175(\text{grams contained U} - 235)}{350} + \frac{50(\text{grams U} - 233)}{200} + \frac{50(\text{grams Pu})}{200} = 1$$

Figure: 25 TAC §289.201(m)(2)(A)(ii)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552----CONFIDENTIAL

This document contains information submitted to Radiation Control, Department of State Health Services by \_\_\_\_\_  
(Name of Company) (Name of Submitter)

that is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C \_\_\_\_\_  
(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

\_\_\_\_\_  
(Signature and Title) (Office) (Date)"

Figure: 25 TAC §289.202(ggg)(2)(E)

Name	Symbol	Atomic Number	Name	Symbol	Atomic Number
Actinium	Ac	89	Mercury	Hg	80
Aluminum	Al	13	Molybdenum	Mo	42
Americium	Am	95	Neodymium	Nd	60
Antimony	Sb	51	Neptunium	Np	93
Argon	Ar	18	Nickel	Ni	28
Arsenic	As	33	Niobium	Nb	41
Astatine	At	85	Nitrogen	N	7
Barium	Ba	56	Osmium	Os	76
Berkelium	Bk	97	Oxygen	O	8
Beryllium	Be	4	Palladium	Pd	46
Bismuth	Bi	83	Phosphorus	P	15
Bromine	Br	35	Platinum	Pt	78
Cadmium	Cd	48	Plutonium	Pu	94
Calcium	Ca	20	Polonium	Po	84
Californium	Cf	98	Potassium	K	19
Carbon	C	6	Praseodymium	Pr	59
Cerium	Ce	58	Promethium	Pm	61
Cesium	Cs	55	Protactinium	Pa	91
Chlorine	Cl	17	Radium	Ra	88
Chromium	Cr	24	Radon	Rn	86
Cobalt	Co	27	Rhodium	Rh	45
Copper	Cu	29	Rubidium	Rb	37
Curium	Cm	96	Ruthenium	Ru	44
Dysprosium	Dy	66	Samarium	Sm	62
Einsteinium	Es	99	Scandium	Sc	21
Erbium	Er	68	Selenium	Se	34
Europium	Eu	63	Silicon	Si	14
Fermium	Fm	100	Silver	Ag	47
Fluorine	F	9	Sodium	Na	11
Francium	Fr	87	Strontium	Sr	38
Gadolinium	Gd	64	Sulfur	S	16
Gallium	Ga	31	Tantalum	Ta	73
Germanium	Ge	32	Technetium	Tc	43
Gold	Au	79	Tellurium	Te	52
Hafnium	Hf	72	Terbium	Tb	65
Holmium	Ho	67	Thallium	Tl	81
Hydrogen	H	1	Thorium	Th	90
Indium	In	49	Thulium	Tm	69
Iodine	I	53	Tin	Sn	50
Iridium	Ir	77	Titanium	Ti	22
Iron	Fe	26	Tungsten	W	74
Krypton	Kr	36	Uranium	U	92

Name	Symbol	Atomic Number	Name	Symbol	Atomic Number
Lanthanum	La	57	Vanadium	V	23
Lead	Pb	82	Xenon	Xe	54
Lutetium	Lu	71	Ytterbium	Yb	70
Magnesium	Mg	12	Yttrium	Y	39
Manganese	Mn	25	Zinc	Zn	30
Mendelevium	Md	101	Zirconium	Zr	40



**INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE  
COMPLETION OF BRC FORM 202-2**  
*(All doses should be stated in rems)*

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).
2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.
3. Enter the code for the type of identification used as shown below:  

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSJ	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other
4. Check the box that denotes the sex of the individual being monitored.
5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.
6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.
7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.
8. Enter the Agency license or registration number or numbers.
9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.

10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.
11. Enter the deep dose equivalent (DDE) to the whole body.
12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.
13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE, WB).
14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE, ME).
15. Enter the committed effective dose equivalent (CEDE).
16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.
17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.
18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.
19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.
20. Enter the date this form was signed by the monitored individual.
21. [OPTIONAL] Enter the name of the licensee, registrant or facility not licensed by the Agency, providing monitoring for exposure to radiation (such as a DOE facility) or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.

22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on file documentation of all the information on the Agency Form Y being signed.

23. [OPTIONAL] Enter the date this form was signed by the designated representative.

Texas Department of State Health Services/Radiation Control		<b>OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD</b>		5. DATE OF BIRTH	
1. NAME (LAST, FIRST, MIDDLE INITIAL)		2. IDENTIFICATION NUMBER		4. SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	
3. ID TYPE		8. LICENSE OR REGISTRATION NUMBER(S)		9A. RECORD ESTIMATE	
7. LICENSEE OR REGISTRANT NAME		9B. ROUTINE PSE			
6. MONITORING PERIOD					
<b>INTAKES</b>					
10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN µCi		
				11. DEEP DOSE EQUIVALENT (DDE)	
				12. EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)	
				13. SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE,WB)	
				14. SHALLOW DOSE EQUIVALENT, MAX EXTREMITY (SDE,ME)	
				15. COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)	
				16. COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)	
				17. TOTAL EFFECTIVE DOSE EQUIVALENT (BLOCKS 11+15) (TEDE)	
				18. TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN (BLOCKS 11+16) (TODE)	
19. COMMENTS					
20. SIGNATURE -- LICENSEE OR REGISTRANT					
21. DATE PREPARED					



**INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE  
COMPLETION OF BRC FORM 202-3  
(All doses should be stated in rems)**

1. Type or print the full name of the monitored individual in the order of last name (include "Jr.," "Sr.," "III," etc.), first name, middle initial (if applicable).
2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.
3. Enter the code for the type of identification used as shown below:  

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other
4. Check the box that denotes the sex of the individual being monitored.
5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.
6. Enter the monitoring period for which this report is filed. The format should be MM/DDYY - MM/DDYY.
7. Enter the name of the licensee or registrant.
8. Enter the Agency license or registration number or numbers.
- 9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.
- 9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring.

- 10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xs-###x," for instance, Cs-137 or Tc-99m.
- 10B. Enter the lung clearance class as listed in subsection (egg)(2)(F) of this section for all intakes by inhalation.
- 10C. Enter the mode of intake. For inhalation, enter "I." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."
- 10D. Enter the intake of each radionuclide in µCi.
11. Enter the deep dose equivalent (DDE) to the whole body.
12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.
13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).
14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).
15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".
16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".
17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.
18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. **COMMENTS.**  
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.
20. Signature of the person designated to represent the licensee or registrant.
21. Enter the date this form was prepared.

Figure: 28 TAC §5.4001(c)(2)(B)(i)

**TEXAS WINDSTORM INSURANCE ASSOCIATION  
PROCEDURE FOR CALCULATING MEMBER ASSESSMENT  
PERCENTAGES INCLUDING CREDIT FOR VOLUNTARY WRITINGS**

[1] STATEWIDE DIRECT WRITTEN PREMIUMS	[2] NET DIRECT WRITTEN PREMIUMS	[3] COMPANY PERCENT OF STATEWIDE PREMIUMS WRITTEN	[4] TOTAL PREMIUMS IN CATASTROPHE AREAS
(a)(b)(c) E.C. CMP HO	Total of Col. [1](a) & (b) x 90% Col. [1](c) x 50%	[2] + Total of [2]	(ASSOCIATION + VOLUNTARY)
[5] NORMAL REQUIRED QUOTA IN DESIGNATED AREAS	[6] CREDIT FOR COMPANY'S VOLUNTARY PREMIUMS	[7] DIFFERENCE BETWEEN NORMAL REQUIRED PARTICIPATION AND VOLUNTARY CREDIT PREMIUMS	[8] ASSOCIATION ASSESSMENT PERCENTAGE PRIOR TO OFFSET
([3] x [4])	(not to exceed column [5])	([5] - [6])	[7] + Total of [7]
[9] NET ASSOCIATION ASSESSMENT PERCENTAGE			
(After application of offset)			

Figure: 34 TAC Chapter 3--Preamble

<b>FY</b>	<b>Gain (or Loss) to General Revenue Fund 0001</b>	<b>Gain (or Loss) to Property Tax Relief Fund 0304</b>
2008	\$ 0	\$ 0
2009	4,800,000	800,000
2010	9,700,000	1,600,000
2011	12,800,000	2,200,000
2012	12,800,000	2,200,000
2013	12,800,000	2,200,000

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
TEXAS COMMISSION ON LAW ENFORCEMENT  
OFFICER STANDARDS AND EDUCATION  
AND  
THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

This memorandum of understanding ("MOU") is made and entered into by and between the Texas Commission on Law Enforcement Officer Standards and Education, a regulatory agency of the state of Texas, hereinafter called the "Commission" and the Texas Department of Criminal Justice, an agency of the state of Texas, hereinafter called the "Department". This MOU is entered into pursuant to Section 1701.257 of the Texas Occupations Code.

WHEREAS, said Section 1701.257 requires the Commission and the Department enter into an MOU for the specific purpose of establishing each agency's respective responsibility in developing a basic training program in the use of firearms by community supervision and corrections department officers ("CSCDO") and parole officers ("PO"), and

WHEREAS, the program established pursuant to the MOU must provide instruction in:

1. legal limitations on the use of firearms and on the powers and authority of the CSCDO and PO;
2. range firing and procedure;
3. firearms safety and maintenance; and
4. other topics determined by each agency to be necessary for the responsible use of firearms by the CSCDO and PO.

NOW THEREFORE, know all men by these presents; that in consideration of the mutual covenants, agreements and benefits of both parties, it is agreed as follows:

I

The Department represents that CSCDO and PO are not "county jailers(s)" and are not "officers" or "Peace Officers" as defined under Section 1701.001 of the Texas Occupations Code.

II

The Department agrees that, on the basis of training needs, it will develop instructor lesson plans that shall contain learning objectives and student evaluations for each course. The courses provided shall be in accordance with the Rules, or as approved in writing by the Commission.

III

The Department agrees that it will submit to the Commission a report of training for each course conducted in accordance with the Rules.

IV

The Commission shall issue a certificate of firearms proficiency to each CSCDO and PO the Commission determines has successfully completed the program.

V

The Commission may suspend this MOU if the Department is found to be unsatisfactory under the risk assessment process, as defined by Chapter 1701, Occupations Code and Section 215.5 and 215.13 of the Rules. The Commission shall reinstate this MOU once the Department has made the necessary changes as directed by the Commission.

EXECUTED IN TWO ORIGINALS ON THE DATES SHOWN

Texas Commission on Law Enforcement

Texas Department of Criminal Justice

BY: \_\_\_\_\_  
Timothy A. Braaten  
Executive Director

BY: \_\_\_\_\_  
Brad Livingston  
Executive Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Figure: 40 TAC §85.201(t)(2)



# 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.

## Texas State Affordable Housing Corporation

### Notice of the Implementation of a Qualified Mortgage Credit Certificate Program

The Texas State Affordable Housing Corporation (the "Corporation"), a nonprofit corporation organized under the laws of the State of Texas (the "Program Area"), is implementing a qualified mortgage credit certificate program (the "Program") within the Program Area to assist low and moderate income first-time homebuyers. A Mortgage Credit Certificate ("MCC") is an instrument designed to assist persons of low to moderate income to better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the lesser of \$2,000 or the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

A qualified purchaser of a residence located within a Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be eligible to receive an MCC, a purchaser must meet the following criteria:

1. The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained.
2. The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence.
3. The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months.
4. Federal law imposes limitations on the purchase price of homes financed under the program. The current maximum purchase price for a one-family home in a non-targeted area is \$237,031 and for a one-family home in a targeted area is \$289,705. These limitations are periodically adjusted. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage. The cost of the residence must not exceed the maximum purchase price limits. The purchase price limitation does not apply to qualified home improvement loans. There are special rules that apply to qualified rehabilitation loans.

Additionally, an applicant's current annualized family income may not exceed applicable median family incomes. For detailed income limits, please visit our website at [www.tsahc.org](http://www.tsahc.org).

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a

portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a \$100 application fee, an MCC issuance fee equal to one percent of the amount of such person's loan plus \$250 at closing.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact the Corporation's Financial Advisor, Robert Johnson, First Southwest Company at (214) 953-4000.

TRD-200804484

David Long  
President

Texas State Affordable Housing Corporation

Filed: August 19, 2008

## Department of Aging and Disability Services

### Public Notice Announcing the Pre-Application Orientation (PAO) for Enrollment of Medicaid Waiver Program Providers

The Department of Aging and Disability Services (DADS) will hold a Pre-Application Orientation (PAO) for persons seeking to participate as contractors in the Home and Community-based Services (HCS) or the Texas Home Living (TxHmL) Medicaid Waiver Programs or both. Two representatives may attend and represent a legal entity.

Persons wanting to attend the PAO must access the registration form on the DADS website at: <http://www.dads.state.tx.us/forms/8629/>. The registration form will only be available on the DADS website Friday, September 5, 2008, through Friday, November 7, 2008. The registration form must be completed, printed, signed by the authorized representative and returned to:

Department of Aging and Disability Services

Community Services Contracts, Attn: Patsy Haralson

P.O. Box 149030, MC: W-517

Austin, TX 78714-9030

DADS will not accept faxes or any other forms of written requests for the registration form. A completed registration form is submitted timely only under the following conditions:

- (1) If mailed via the US Postal Service, the completed registration form must bear a postmark date no later than **Friday, November 7, 2008**.
- (2) If sent via a common or contract carrier, a receipt by the carrier must show that it was placed in the hands of the carrier no later than **Friday, November 7, 2008**.
- (3) If hand delivered, it must be delivered directly to the DADS, Community Services Contracts Unit, 701 W. 51st Street (MC W-517), Austin, Texas 78751 no later than 5:00 p.m. on **Friday, November 7, 2008**.

The PAO will be held at 8:45 a.m., **Monday, December 8, 2008**, in Austin, Texas at the J. J. Pickle Center. Registration will close promptly at 8:40 a.m. **Arrivals after 8:40 a.m. will not be admitted, and will not receive a PAO Certificate of Attendance.** (No Exceptions)

Persons requiring an interpreter for the deaf or hearing impaired, or any other reasonable accommodation, must contact Geraldine Taylor at least three business days prior to the PAO, at (512) 438-5370. For any additional information concerning the PAO registration, you may contact Patsy Haralson, Contract Specialist, at (512) 438-2285. Further information regarding the PAO application process may be obtained on the DADS website at:

<http://www.dads.state.tx.us/providers/HCS/index.cfm>

#### **National Provider Identifier**

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 requires health care entities to use National Provider Identifiers (NPI) on standard health care transactions. DADS requires all health care entities applying to contract with DADS to obtain and report their NPI number. You will be required to submit a NPI assignment letter or email from the National Plan and Provider Enumeration System (NPPES), along with your *Application for Participation* packet, which will be provided at the PAO.

TRD-200804517

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Filed: August 20, 2008

### **Office of the Attorney General**

#### **Notice of Settlement of a Texas Solid Waste Disposal 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 and the Texas Clean Water 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 Acts.

Case Title and Court: *Settlement Agreement in State of Texas v. Angela Ellis and John C. Ellis, d/b/a Ellis Auto Detailing*, Cause No. D-1-GV-06-001275, 98th Judicial District of Travis County, Texas.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act at a property outside of San Angelo, Tom Green County, Texas. The defendants are Angela Ellis and John C. Ellis, doing business as Ellis Auto Detailing. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The Solid Waste Disposal Act violations are for storage and disposal of used and scrap tires without a TCEQ registration.

Nature of Settlement: The settlement awards the State a \$44,446.72 civil penalty, \$40,000.00 of which is deferred as long as Angela and John Ellis remain in compliance with the injunctive relief. If Angela and John Ellis fully comply with the injunctive relief, \$40,000.00 of the civil penalty is forgiven. The settlement also awards \$2,184.91 in unpaid administrative penalties and \$3,100 in attorney's fees. Finally, the settlement also awards injunctive relief.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments and written comments on the proposed settlement should be directed to Mary Smith, 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) 936-1841.*

TRD-200804501

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 20, 2008

#### **Texas Clean Air Act Settlement Notice**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Clean Air Act and the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *State of Texas v. Equistar Chemicals, LP; Millennium Petrochemicals, Inc.; Millennium Petrochemical GP, LLC.; and Lyondell Chemical Company*, Cause No. D-1-GV-06-002509, in the 201st Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendants are in the petrochemical production business with facilities located in Harris, Brazoria, Nueces, and Jefferson Counties. Defendants have been cited by the TCEQ for numerous violations due to releases of volatile chemicals, failure to report releases, failure to monitor equipment and failure to maintain and replace equipment as needed and required by permits and regulations on several occasions at each of their facilities.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendants to pay civil penalties, fund supplemental environmental projects, and pay attorney's fees to the State. Defendants have agreed to pay Plaintiff \$6,500,000.00, in civil penalties, \$1,000,000 of which will be used to fund TCEQ-approved Supplemental Environmental Project(s) and an additional \$500,000.00 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. 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) 936-1841.*

TRD-200804496

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 19, 2008

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## Brazos Valley Council of Governments

### Request for Proposals for Actuarial Services

On August 15, 2008, the Brazos Valley Council of Governments will release a Request for Proposals for a qualified actuary to provide benefit calculations and analysis for the Brazos Valley's multi-share health coverage program and to provide general consulting on issues surrounding plan design and risk.

A complete set of specifications and documents is available for download at [www.bvcog.net](http://www.bvcog.net) or by calling (979) 595-2801, extension 2224. To be considered, proposals must be received no later than 4:00 p.m. CST on September 15, 2008.

TRD-200804401

Crystal Crowell

Program Manager, HIV Administrative Services

Brazos Valley Council of Governments

Filed: August 15, 2008

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### Request for Proposals for Consulting Services

On August 15, 2008, the Brazos Valley Council of Governments (BVCOG) will release a Request for Proposals for a Consultant for their multi-share health coverage program. Proposals are requested from eligible, qualified consultants to apply their expertise in assisting BVCOG with the development of the Brazos Valley's multi-share health coverage program and to provide general consulting on issues surrounding plan design, development of a provider network and negotiation of rates, cost saving strategies, and other strategies for developing a successful multi-share program.

A complete set of specifications and documents is available for download at [www.bvcog.net](http://www.bvcog.net) or by calling (979) 595-2801, extension 2224. To be considered, proposals must be received no later than 4:00 p.m. CST on September 3, 2008.

TRD-200804400

Crystal Crowell

Program Manager, HIV Administrative Services

Brazos Valley Council of Governments

Filed: August 15, 2008

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## 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 August 8, 2008, through August 14, 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's web site. The notice was published on the web site

on August 20, 2008. The public comment period for this project will close at 5:00 p.m. on September 19, 2008.

### FEDERAL AGENCY ACTIONS:

**Applicant: Premier Geophysical Services;** Location: The project is located approximately 5 miles southeast of Baytown, at the confluence of FM 1405 and FM 2354 (Tri-City Boulevard), at Houston Point, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 316186; Northing: 3283264. Project Description: The applicant proposes to conduct standard 3-D seismic survey operations within an approximate 5.3-square-mile area. The work would be conducted using airboats to transport personnel and equipment within the portions of the proposed project area covered in water and coastal marsh areas. Shot holes would be drilled to a depth of 80 feet and loaded with a 5.5-pound charge of pentolite. Bentonite would be added to fill the hole and the natural cuttings would be pushed back down the hole and/or scattered where practical. A drill-mounted airboat would be used in shallow waters and a pontoon drill would be used in deeper waters to accomplish the drilling. Seismic detectors and the interconnect cables for the recording equipment would then be placed at the surveyed points. Before detonation, airboats would make three passes around each energy point in an attempt to disburse fish and other mobile aquatic species as practicable as possible. Monitoring of the project area during seismic activities will be conducted by personnel operating the boats to prevent accidental strikes or other disturbances. CCC Project No.: 08-0205-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00418 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).

**Applicant: U.S. Army Corps of Engineers;** Location: Coast-wide. Project Description: Public notice is for the re-issuance and renaming of four Regional General Permits. CCC Project No.: 08-0209-F1. Type of Application: U.S.A.C.E. permit applications #SWG-1998-02413, SWG-1997-02817, SWG-2002-02392, and SWG-2002-02405 are 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).

**Applicant: Davis Petroleum Corporation;** Location: The project is located in Galveston Bay, State Tracts (ST's) 101 and 86, approximately 11 miles east of Seabrook, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 321790.20; Northing: 3275687.44. Project Description: The applicant proposes to drill Texas ST 101 Well No. 1. This activity would include the installation and maintenance of a well platform, production platform and a flowline from the well to the production platform. If necessary, a well pad comprised of approximately 1,267 cubic yards of fill may be placed under the drilling rig for stabilization. In addition, the applicant proposes to install a sales pipeline up to 6 inches in diameter from the proposed well platform in a northeasterly direction approximately 7,512 feet to an existing Davis Petroleum Platform in ST 86. Approximately 2,500 cubic yards of material would be displaced by jetting and/or trenching during the installation of the pipeline. CCC Project No.: 08-0212-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00622 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 review 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: Genesis Producing Company, L.P.;** Location: The project is located in Galveston Bay, State Tract (ST) 205, approxi-

mately 7.8 miles northeast of Seabrook, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 316400.63; Northing: 3273863.60. Project Description: The applicant proposes to drill a well in ST 205, and install a well platform, flowline, production platform, and walkway (if required). The applicant also proposes to install a sales pipeline up to 8 inches in diameter from said well northeasterly approximately 1,911 feet to an existing Layton Energy Platform also in ST 205. Approximately 1,200 cubic yards of material would be displaced during pipeline construction. CCC Project No.: 08-0213-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00603 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 review 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).

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, including a copy the consistency certifications for inspection, may be obtained from 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 to (512) 475-0680.

TRD-200804512

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: August 20, 2008



## Comptroller of Public Accounts

### Notice of Contract Amendment and Renewal

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72 - 75, Property Code, the Comptroller of Public Accounts (Comptroller) announces this notice of amendment and renewal of two (2) contracts awarded for providing professional unclaimed property audit services for one (1) additional one-year term, each.

The Notice of Request for Proposals (RFP #179b) was published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4250). The Notice of Award was published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2569).

The contracts amended and renewed are:

Audit Services U.S., LLC., 212 West 35th Street, Suite 600, New York, New York 10001. The original term of the contract was October 5, 2007 through August 31, 2008. The renewal extends the contract through August 31, 2009, with one option for one (1) additional one-year renewal remaining.

Abandoned Property Experts, LLC, 5521 Geddes Rd., Ann Arbor, Michigan 48105. The original term of the contract was November 29, 2007 through August 31, 2008. The renewal extends the contract through August 31, 2009, with one option for one (1) additional one-year renewal remaining.

The total amount of each contract is based on a percentage of the cash value of net unclaimed property received by Comptroller as a result of an audit.

TRD-200804448

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 18, 2008



### Notice of Contract Amendment and Renewal

The Comptroller of Public Accounts (Comptroller) announces the amendment and renewal of the professional accounting services contract with McConnell & Jones, LLP, 3040 Post Oak Blvd., Suite 1600, Houston, Texas 77056. The contractor provides professional accounting services to the Texas Prepaid Higher Education Tuition Board.

The term of the contract was July 19, 2006 through August 31, 2008. This renewal extends the term of the contract through August 31, 2009.

The total amount of the contract as amended is estimated to be \$115,500.00.

The notice of request for proposals (RFP 175L) was originally published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1496). The notice of award was published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6395).

TRD-200804460

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 19, 2008



### Notice of Request for Proposals

Pursuant to §2107.003(c-1), Texas Government Code, the Comptroller of Public Accounts (Comptroller), announces its issuance of a Request for Proposals (RFP #190b) for the purpose of obtaining collection services from a qualified firm for the collection of certain delinquent state taxes that are required by law to be collected by the Comptroller. The successful respondent, if any, will be expected to begin performance of the contract on or after October 29, 2008 or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM 201, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on August 29, 2008, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller is also making the RFP available electronically on the Electronic State Business Daily after August 29, 2008, 10:00 a.m. (CZT). The address of the Electronic State Business Daily is <http://esbd.cpa.state.tx.us>.

Non-Mandatory Letters of Intent and Questions: Letters of Intent are non-mandatory. All written inquiries, questions and non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, September 12, 2008. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 or e-mail them to con-



tracts@cpa.state.tx.us to ensure timely receipt. Letters of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must be signed by an authorized representative of the responding entity. All responses to questions will be posted electronically on Wednesday, September 17, 2008 or as soon thereafter as practical, on the Electronic State Business Daily at: <http://esbd.cpa.state.tx.us>. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

**Closing Date:** Proposals must be received in the Assistant General Counsel for Contracts' Office at the location specified above (ROOM 201) no later than 2:00 p.m. (CZT), on Tuesday, September 30, 2008. Proposals received in ROOM 201 after this time and date will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

**Evaluation and Award Procedure:** All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, August 29, 2008, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Friday, September 12, 2008, 2:00 p.m. CZT; Official Responses to Questions posted - Wednesday, September 17, 2008, or as soon thereafter as practical; Proposals Due - Tuesday, September 30, 2008, 2:00 p.m. CZT; Contract Execution - October 28, 2008, or as soon thereafter as practical; Commencement of Contract Activities - October 29, 2008 or as soon thereafter as practical.

TRD-200804461

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: August 19, 2008



#### Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications (RFQ #183b) related to these contract awards was published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3459).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that eleven (11) contracts were awarded on August 13, 14 and 15, 2008 as follows:

A contract is awarded to Jacqueline A. Muhammad d/b/a Alexander Consulting, 11303 Chimney Rock Road, Suite 109, Houston, Texas 77035. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the

contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Energy Network, Inc., 4646 Hwy 6 South, PMB #135, Sugar Land, Texas 77478-5214. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Dorothea Brooks, CPA, 1203 South Houston Ave, Humble, Texas 77338. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Charles Neira, 6001 Cattail, Corpus Christi, Texas 78414. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Joe Wamp, 6606 Mapleshade Lane, #21F, Dallas, Texas 75252. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 14, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Nolton Consulting, LLC, 200 Creekside Park Drive, Johns Creek, Georgia 30022. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 14, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Sandra Forbes, 19019 Neath Street, Humble, Texas 77346. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to State and Local Tax Group, 308 Cooper Dr., Hurst, Texas 76053. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Tarrant & Bulgherini, P.C., 7109 Yucca Dr., Galveston, Texas 77551-1725. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Willie L. Sullivan, Jr., 4530 Brookren Ct., Pearland, Texas 77584. Examinations will be assigned in \$33,000 increments or packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August

18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

TRD-200804494

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: August 19, 2008



### Notice of Request for Proposals

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72 - 75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP #190c) from qualified, independent firms to provide professional unclaimed property auditing services to Comptroller. Successful respondents will be expected to assist Comptroller in conducting audits of unclaimed property holders and providing other related services as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s) will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about September 22, 2008.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, August 29, 2008, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically after 10:00 a.m. (CZT), Friday, August 29, 2008.

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Wednesday, September 3, 2008. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on Friday, September 5, 2008, or as soon thereafter as practical, on the Electronic State Business Daily at: <http://esbd.cpa.state.tx.us>. Letters of Intent and Questions received after the foregoing deadline will not be considered. Respondents are solely responsible for verifying timely receipt in the Issuing Office of Non-Mandatory Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Monday, September 15, 2008. Proposals received in the Issuing Office after this time and date will not be considered. Respondents are solely responsible for verifying the timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 29, 2008, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - September 3, 2008, 2 p.m. CZT; Official Questions and Responses posted - September 5, 2008 (or as soon thereafter

as practical); Proposals Due - September 15, 2008, 2 p.m. CZT; Contract Execution - September 22, 2008, or as soon thereafter as practical; Commencement of Project Activities - September 22, 2008, or as soon thereafter as practical.

TRD-200804500

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 20, 2008



### Notice of Withdrawal of Request for Proposals

Pursuant to Chapter 2254, Subchapter B and Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the withdrawal of its Request for Proposals (RFP 190a) for consulting services to assist the Comptroller in reviewing the methodology of the annual Property Value Study.

Issuance Date: The Request for Proposals was published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6628).

TRD-200804449

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 18, 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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/25/08 - 08/31/08 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 08/25/08 - 08/31/08 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/08 - 09/30/08 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/08 - 09/30/08 is 5.00% 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-200804464

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 19, 2008



## Credit Union Department

### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from West Texas Educators Credit Union, Odessa, Texas to expand its field of membership. The proposal would permit students at Odessa College in Odessa, Texas, to be eligible for membership in the credit union.

An application was received from United Energy Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in and businesses located within 10 miles of the office of United Energy Credit Union located at 8790 F.M. 1960, Humble, Texas 77338 and 1111 Louisiana, Houston, Texas 77002, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#1), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located in Brazoria County, Texas, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#2), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located in Fort Bend County, Texas, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#3), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located in Galveston County, Texas, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#4), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located in Harris County, Texas, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#5), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located in Matagorda County, Texas, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#6), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located in Wharton County, Texas, to be eligible for membership in the credit union.

An application was received from Anheuser-Busch Employees' Credit Union (#1), St. Louis, Missouri to expand its field of membership in Texas. The proposal would permit individuals, organizations and associations who are located, reside, or work within a ten mile radius of our branch located at 3500 Manor Way, Dallas, Texas 75235, to be eligible for membership in the credit union.

An application was received from Anheuser-Busch Employees' Credit Union (#2), St. Louis, Missouri to expand its field of membership in Texas. The proposal would permit individuals, organizations and associations who are located, reside, or work within Lamar County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested

party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200804497  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: August 20, 2008

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**Notice of Final Action Taken**

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved  
Midwestern State University Credit Union, Wichita Falls, Texas - See *Texas Register* issue dated May 30, 2008.

First Service Credit Union, Houston, Texas - See *Texas Register* issue dated June 27, 2008.

Metroplex Credit Union, Carrollton, Texas - See *Texas Register* issue dated June 27, 2008.

Application(s) to Amend Articles of Incorporation - Approved  
Galleria Credit Union, Dallas, Texas - See *Texas Register* issue dated June 27, 2008.

Application(s) for a Merger or Consolidation - Approved  
Key Federal Credit Union (Houston) and Smart Financial Credit Union (Houston) - See *Texas Register* issue dated April 25, 2008.

Garland Federal Credit Union (Garland) and America's Credit Union (Garland) - See *Texas Register* issue dated April 25, 2008.

TRD-200804498  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: August 20, 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 **September 29, 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 September 29, 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: Atlas Pipeline Mid-Continent WestTex, LLC; DOCKET NUMBER: 2008-0758-AIR-E; IDENTIFIER: RN100213701; LOCATION: Reagan County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §122.145(2)(C) and §122.146(2), General Operating Permit Number O-440/Oil and Gas General Operating Number 514, Site-wide requirements (1) and (2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit a semi-annual deviation report and a compliance certification; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Roger Collins; DOCKET NUMBER: 2008-0581-IHW-E; IDENTIFIER: RN105362859; LOCATION: Chilton, Falls County; TYPE OF FACILITY: cattle feeding operation; RULE VIOLATED: 30 TAC §335.4(2), by failing to prevent the disposal of industrial solid waste; PENALTY: \$1,020; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0714-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 6257E, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,650; Supplemental Environmental Project (SEP) offset amount of \$2,260 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: James Lewis Allen dba Holiday Springs Mobile Home Park; DOCKET NUMBER: 2008-0770-MWD-E; IDENTIFIER: RN101194041; LOCATION: Harrison County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0014746001 Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limits for total suspended solids, five-day biochemical oxygen demand, and total chlorine residual; PENALTY: \$2,440; SEP offset amount of \$976 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: John T. Leslie; DOCKET NUMBER: 2008-0522-PST-E; IDENTIFIER: RN101757722; LOCATION: Daingerfield, Morris County; TYPE OF FACILITY: underground storage tank (UST); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; PENALTY: \$3,675; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Darryl Wheeler dba Magnolia Lake RV Park; DOCKET NUMBER: 2008-0748-PWS-E; IDENTIFIER: RN101237154; LOCATION: Polk County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.109(f)(1)(A) and §290.122(a)(1) and THSC, §341.031(a), by exceeding the acute maximum contaminant level for fecal coliform and *E. coli* bacteria and by failing to provide public notification; 30 TAC §290.46(q)(1), by failing to issue a boil water notification; and 30 TAC §290.109(f)(3) and §290.122(b)(2) and THSC, §341.031(a), by exceeding the maximum contaminant level for total coliform and by failing to provide public notice; PENALTY: \$2,335; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Northwest Harris County Municipal Utility District Number 5; DOCKET NUMBER: 2008-0826-MWD-E; IDENTIFIER: RN101400414; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$4,320; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: PD Glycol LP; DOCKET NUMBER: 2008-0775-AIR-E; IDENTIFIER: RN100825413; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit 3361A SC 3, General Operating Permit Number O-01620 SC 7A, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; PENALTY: \$5,500; SEP offset amount of \$2,200 applied to Jefferson County-Southeast Texas Regional Air Monitoring Network; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 476; DOCKET NUMBER: 2008-0670-PST-E; IDENTIFIER: RN102358686; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$5,816; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: H. G. Word; DOCKET NUMBER: 2008-0332-PST-E; IDENTIFIER: RN101573582; LOCATION: Tom Bean, Grayson County; TYPE OF FACILITY: 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;

PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5000.

TRD-200804459

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 19, 2008



### Notice of Completion of Technical Review on Proposed Radioactive Material License

The following notice was issued during the period of August 13, 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.

**NOTICE OF COMPLETION OF TECHNICAL REVIEW AND DRAFT LICENSE OF PROPOSED RADIOACTIVE MATERIAL LICENSE NUMBER R04100 AND NOTICE OF PUBLIC MEETING APPLICATION AND PRELIMINARY DECISION.** Waste Control Specialists, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a radioactive material license to authorize disposal of low-level radioactive waste. Waste Control Specialists, LLC provides commercial hazardous waste and radioactive material management and disposal services. The application requests authorization to license a compact waste disposal facility for disposal of low-level radioactive waste subject to the Texas Low-Level Radioactive Waste Disposal Compact. The application also requests authorization under a license for a federal facility waste disposal facility for disposal of low-level radioactive waste that is the responsibility of the federal government. The application also requests exemption from a Commission rule requirement in Title 30 Texas Administrative Code §336.734(a), relating to the ownership of land on which low-level radioactive waste is disposed. Specifically, Waste Control Specialists, LLC requests exemption from the requirement that the state or federal government own the land on which low-level radioactive waste is disposed for the federal facility waste disposal facility. The land disposal facility is proposed to be located at 9998 West Highway 176 approximately one mile north of State Highway 176 and one half mile east of the Texas-New Mexico State boundary and approximately 30 miles west of the city of Andrews in Andrews County, Texas. The application was submitted to the TCEQ on August 4, 2004, and was originally processed as proposed license number RW4100. The proposed license has been re-designated as R04100 to conform to revised TCEQ coding requirements. The TCEQ Executive Director has completed the technical review of the application and prepared a draft license. The draft license if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The Executive Director prepared a written environmental analysis on the application that is available to the public for review. The license application, Executive Director's technical summary, environmental analysis, and draft license are available for viewing and copying at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas. The application, technical summary, draft license, and environmental analysis are available at the offices of the TCEQ at 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753 and are also available for viewing on the internet at: <http://www.tceq.state.tx.us/goto/wcsllrw>.

**PUBLIC COMMENT/PUBLIC MEETING.** The TCEQ will hold a public meeting for this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds 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. 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 on the application, the draft license, the environmental analysis, or the exemption request. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application and the Executive Director's preliminary decision, but these informal comments made during the informal period will not be considered by the Commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the application. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and provides a mailing address. Only relevant and material issues raised during the formal comment period can be considered if a contested case hearing is granted. The Public Meeting is to be held: Monday, September 8, 2008 at 7:00 p.m. Andrews High School Little Theater 1400 NW Avenue K Andrews, Texas 79714

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, mailing address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**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 license 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. 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 within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the 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 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. Further information may also be obtained from Waste Control Specialists, LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, TX 75240 or by calling Mr. William Dornsife, P.E. at (717) 540-5220.

TRD-200804509

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 2008



#### Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, §361.613, Subchapter S, the executive director of the Texas Commission of Environmental Quality (TCEQ or commission) shall calculate and publish annually the commission's costs to administer the Voluntary Cleanup Program. The Innocent Owner/Operator Program, based on authority from Solid Waste Disposal Act, §361.752(b), shall also calculate and publish annually a rate established for the purposes of identifying the costs recoverable by the commission. The TCEQ is publishing the hourly billing rate of \$107 for both the Voluntary Cleanup Program and the Innocent Owner/Operator Program for Fiscal Year 2009.

The Voluntary Cleanup and The Innocent Owner/Operator Program are implemented by the same TCEQ staff. Therefore, a single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding and application fees, divided by the estimated hours to complete program tasks. The hourly rate for the two programs was calculated and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 35% to account for non-site specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 20.18%. The current fringe benefit rate is 26.34%. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a rate that applies to the agency as a whole. The indirect cost rate is 31.57%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the whole agency. The billing process for Fiscal Year 2009 will use the hourly billing rate of \$107 for both the Voluntary Cleanup Program and the Innocent Owner/Operator Program and will not be adjusted. All travel-related expenses will be billed as a separate expense. After an applicant's initial \$1,000 application fee has been expended by the Innocent Owner/Operator Program or the Voluntary Cleanup Program review and oversight, invoices will be sent to the applicant on a monthly basis for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2009 for the continued development and enhancement of the Voluntary Cleanup Program and the Innocent Owner/Operator Program. If the federal funding anticipated for Fiscal Year 2009 does not become available, the commission may publish a new rate. Federal funding of the Voluntary Cleanup Program and the Innocent Owner/Operator Program should occur prior to October 1, 2008.

For more information, please contact Mr. Jay Carsten, P.G., Environmental Cleanup II, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-5873 or email: [jcarsten@tceq.state.tx.us](mailto:jcarsten@tceq.state.tx.us).

TRD-200804398

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 15, 2008



#### Notice of Deletion of the Hicks Field Sewer Corporation Proposed State Superfund Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Hicks Field Sewer Corporation proposed state Superfund site (the Site) from its proposed-for-listing status on the state registry. The state registry is the list of state Superfund sites that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state registry in the July 19, 2002, issue of the *Texas Register* (27 TexReg 6575). The Site consists of approximately 3.8 acres and is located 1.8 miles west of the intersection of United States (U.S.) Highway 81-287 and Farm-to-Market Road 156, or approximately one mile east of the intersection of U.S. Business Route 287 and Hicks Field Road near Saginaw, Tarrant County, Texas. The Site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The Site is located approximately 2.5 miles northwest of Saginaw, Tarrant County, Texas. Two sludge drying beds, two surface impoundments, and two concrete separator tanks were used by the Hicks Field Sewer Corporation from the early 1970's to approximately mid-1994 to provide sewage treatment services for the nearby Hicks Field Industrial Park.

Businesses that operated at the industrial park included a metal finisher, a container manufacturer, a storage tank fabricator, and a small trucking firm. The sewer corporation primarily processed domestic wastes from the industrial park. However, from the early 1970's until operations ceased in early 1981, the metal finisher located in the industrial park reportedly discharged process rinse waters containing metals to the sewer treatment facility. Elevated concentrations of cadmium, chromium, and zinc were found in the sediments remaining in the waste management units of the sewer treatment facility.

From 2002 to 2005, the TCEQ conducted a remedial investigation at the Site. During 2006 and 2007, the TCEQ conducted a removal action at the Site, including excavation, treatment, and disposal of all soils and sediments containing metals concentrations above remediation goals. As part of the removal action, waste management units at the Site were dismantled or filled with clean soil and graded to drain. In addition, excavated areas were filled and graded to drain; and grass was planted

by hydro-seeding throughout the property. The Site remains fenced in order to protect the new grass.

The Site is not appropriate for residential use according to the TCEQ Texas Risk Reduction Program Rule found at 30 Texas Administrative Code (TAC) Chapter 350. The TCEQ has filed a notice in the real property records of Tarrant County stating that the Site is not appropriate for residential use.

In accordance with 30 TAC §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the Site on March 27, 2008, at the Saginaw City Hall Council Chambers, located at 333 West McLeroy Boulevard, Saginaw, Texas. No comments regarding the proposed deletion were received prior to or at the public meeting. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, MC-199, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. For persons with disabilities, parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Pursuant to 30 TAC §335.344(c), the ED has determined that due to the removal action that has been performed at the Site, the Site no longer presents an imminent and substantial endangerment to public health and safety and the environment.

In accordance with §361.188(d) of the Texas Health and Safety Code, a notice has been filed in the real property records of Tarrant County, Texas stating that the Site has been deleted from the state registry.

All inquiries regarding the deletion of the Site should be directed to Crystal Taylor, Community Relations, telephone number (800) 633-9363, extension, 3844.

TRD-200804399  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 15, 2008



#### Notice of District Petition

Revised Notices issued August 15, 2008.

LP Woodland Lakes Estates, Ltd (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 518 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of three tracts, to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District; (3) the proposed District will contain approximately 450.372 acres located in Harris County, Texas; and (4) most of the land within the proposed District is within the corporate limits of the City of Houston, Texas (City) and a small portion is within the extraterritorial jurisdiction of the City. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$22,790,000.

David B. Hendricks and Houston Intercontinental Trade Center, L.P. (Petitioner) filed a petition for creation of Montgomery County Mu-

nicipal Utility District No. 126 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of five tracts, to be included in the proposed District; (2) there are two lien holders, Sterling Bank, and Benchmark Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 293.49 acres located in Montgomery County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Conroe, Texas (City). According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time; the cost of the project is estimated to be approximately \$24,375,000 for water, wastewater, and drainage facilities, \$3,340,000 for road facilities, and \$1,310,000 for parks and recreational facilities.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200804508  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 20, 2008



#### Notice of Water Quality Applications

The following notices were issued during the period of August 7, 2008 through August 14, 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

2006 MUSTANG CREEK DEVELOPMENT INC. has applied for a renewal of TPDES Permit No. WQ0014641001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 2,600 feet west of State Highway 288 and 2,550 feet north of County Road 58 in Brazoria County, Texas.

BAYER MATERIALSCIENCE LLC which operates facilities which manufacture organic chemicals, plastics, and inorganic chemicals, has applied for a major amendment to TPDES Permit No. WQ0001499000 to authorize the discharge of treated process wastewater, treated sanitary wastewater, utility wastewater, and storm water at a daily average flow not to exceed 10,000,000 gallons per day via new Outfall 008; remove monitoring requirements for acetone at Outfall 007; reduce the monitoring frequencies of total suspended solids, total organic carbon, and ammonia at Outfall 007 to once per week; and remove Outfall 001 from the permit. The current permit authorizes the discharge of treated process wastewater, treated sanitary wastewater, utility wastewater, and storm water via Outfalls 001 and 007 at a daily average flow not to exceed 10,000,000 gallons per day, and the intermittent flow variable discharge of storm water and hydrostatic test water via Outfalls 002, 003, 004, and 006. The facility is located east of Cedar Bayou, approximately 0.5 mile south of the intersection of Farm-to-Market Road 1405 (West Bay Road) and Farm-to-Market Road 565 northeast of the City of Baytown, Chambers 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 ALTO has applied for a renewal of TPDES Permit No. WQ0010546001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 4,000 feet southeast of the intersection of State Highway 21 and U.S. Highway 69 in Cherokee County, Texas.

CITY OF COMANCHE has applied for a renewal of TPDES Permit No. WQ0014445001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 595,000 gallons per day. The facility is located southeast of the intersection of Fleming Avenue and Park Street and north of Indian Creek in Comanche County, Texas.

CITY OF CONROE has applied for a renewal of TPDES Permit No. WQ0010008002, 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 immediately north of the confluence of Lake Creek with the San Jacinto River, at the end of Old Magnolia Road, approximately 2.5 miles west of Interstate Highway 45 and approximately 2.5 miles south of Farm-to Market-Road 2854 in Montgomery County, Texas.

CITY OF HOUSTON Harris County, Harris County Flood Control District, and Texas Department of Transportation - Houston District (members of the Storm Water Management Joint Task Force, or JTF)

which own or operate their portion of the JTF Municipal Separate Storm Sewer System (MS4), have applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of NPDES Permit No. TXS001201. The draft permit authorizes storm water point source discharges to surface water in the state from the JTF MS4. This permit will be renewed as TPDES Permit No. WQ0004685000.

CITY OF MASON has applied for a renewal of TPDES Permit No. WQ0010670001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. The facility is located approximately 3/4 mile northeast of the intersection of U.S. Highway 87 and Farm-to-Market Road 1723, south-east of the City of Mason in Mason County, Texas.

CITY OF PENITAS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014884001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2,000 feet east of the intersection of 19th Street and Military Road (1427), off Chihuahua Road in Hidalgo County, Texas.

CITY OF SOUTH HOUSTON has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010287001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The Applicant had previously requested an amendment for the removal of the mercury limit but is now proceeding instead with a renewal of the existing permit thus leaving the mercury limit in the permit. The facility is located on the west bank of Berry Bayou, at the intersection of Georgia Street and Amarillo Street, in the City of South Houston in Harris County, Texas.

CITY OF VALLEY VIEW has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014892001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 181,000 gallons per day. The facility is located on the east side of Interstate Highway 35, approximately 1.3 miles south of the intersection of Farm-to-Market Road 922 and Interstate Highway 35 in Cooke County, Texas. Authorization to discharge was previously permitted under Permit No. WQ0011164001, which expired September 1, 2007.

DOUBLE DIAMOND UTILITIES CO. has applied for a major amendment to TPDES Permit No. WQ0013786002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 50,000 gallons per day to a daily average flow not to exceed 100,000 gallons per day. The facility is located 2.5 miles northwest of the intersection of Farm-to-Market Road 933 and Farm-to-Market Road 2604 in Hill County, Texas.

EVONIK DEGUSSA CORPORATION which operates Borger Carbon Black Plant, a carbon black manufacturing plant, has applied for a major amendment to TPDES Permit No. WQ0000734000 to establish Outfall 001 for the intermittent discharge of process area wastewater, utility wastewater, domestic wastewater, and storm water during severe weather events. The facility is located adjacent to State Highway 136, approximately 0.25 miles north of the intersection of the Panhandle and Santa Fe Railroad crossing and approximately 0.3 miles west of the City of Borger, Hutchinson County, Texas.

LAXMIBEN LALBHAI PATEL, MAGANBHAI RANCHLODBHAI PATEL, BHAGUBHAI BHULO PATEL AND VINUBHAI BHULO PATEL has applied for a renewal of TPDES Permit No. WQ0012161001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located south of Michael Street at a point approximately



180 feet west of the intersection of McGruder and Michael Streets, north of the city of Cleveland in Liberty County, Texas.

STUDY BUTTE WATER SUPPLY CORPORATION which operates a reverse osmosis water treatment plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004766000, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located approximately 4,000 feet north of the intersection of Ghost Town Road and Ranch Road 170, and approximately one-eighth of a mile northwest of the City of Terlingua, Brewster County, Texas.

US ARMY CORPS OF ENGINEERS has applied for a renewal of TPDES Permit No. WQ00120540001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility is located in Caddo Park, on the northeastern side of Lake Lavon, approximately 2.3 miles east of the intersection of U. S. Highway 380 and State Highway 78 in Collin 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-200804506

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 2008



### Notice of Water Rights Applications

Notices issued August 11, 2008 through August 15, 2008.

APPLICATION NO. 12333; ETC Katy Pipeline, Ltd., Applicant, 800 E. Sonterra Blvd., Suite 400, San Antonio, TX 78258, seeks a temporary water use permit to divert and use not to exceed 22 acre-feet of water from Yarboro Lake on an unnamed tributary of Grassy Creek, Brazos River Basin within a period of one year for industrial purposes (hydrostatic testing) in Grimes County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on June 4, 2008, and additional information and fees were received on July 7, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 15, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by September 2, 2008. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by September 2, 2008. The Executive Director may approve the application unless a written request for a contested case hearing is filed by September 2, 2008.

APPLICATION NO. 12265; Mineola Tuscany Park Homeowners Association, Applicant, P.O. Box 601, Mineola, Texas 75773, has applied for a Water Use Permit to maintain an existing dam and reservoir located on an unnamed tributary of Twomile Branch, Sabine River Basin, for in-place recreational purposes in Wood County. More information on the application and how to participate in the permitting process is given below. The application was received on November 1, 2007. Ad-

ditional information and fees were received on March 25, May 22, and June 26, 2008. The application was accepted for filing and declared administratively complete on July 3, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12291; Texas Westmoreland Coal Company, Applicant, P.O. Box 915, Jewett, Texas 75846, has applied for a Water Use Permit to construct and maintain two reservoirs and maintain two existing reservoirs with a combined normal capacity of 2,077 acre-feet on Mine Creek and Lambs Creek, Brazos River Basin for in-place recreation, domestic, and livestock purposes, including diversions of inflows for domestic and livestock purposes, in Leon County. More information on the application and how to participate in the permitting process is given below. The application was received on December 21, 2007, and additional information and fees were received on March 31, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 22, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12292; Texas Westmoreland Coal Company, Applicant, P.O. Box 915, Jewett, Texas 75846, has applied for a Water Use Permit to construct and maintain two reservoirs and maintain three existing reservoirs with a combined normal capacity of 5,469 acre-feet on Bow Branch Creek, Buffalo Creek, Rena Branch Creek, Silver Creek, and Taylor Springs Branch Creek, Trinity River Basin for in-place recreation, domestic, and livestock purposes, including diversions from inflows for domestic and livestock purposes, in Freestone and Leon Counties. More information on the application and how to participate in the permitting process is given below. The application was received on December 21, 2007, and additional information and fees were received on March 31, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 22, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to

the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200804507

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 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 August 12, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mark Stewart and Dona Stewart dba Stewart Water; SOAH Docket No. 582-08-2960; TCEQ Docket No. 2007-1805-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mark Stewart and Dona Stewart dba Stewart Water on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200804510

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 2008



### General Land Office

#### Public Hearing on Proposed Amendments and New Rules Relating to Erosion Response Plans

The Texas General Land Office will hold a public hearing in the Cameron County/South Padre Island area on September 4, 2008, to receive public comment on the proposed rule amendments and new rule concerning 31 TAC Chapter 15. These rule amendments and new rule address Coastal Area Planning, Management of the Beach/Dune System, and Coastal Erosion Planning and Response that were originally published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3885). The GLO proposed amendments to §15.2, relating to definitions; §15.3, relating to review periods for proposed construction, review periods for local government beach and dune plans, and determination of the line of vegetation by the GLO; and §15.8, relating to beach user fees. The GLO also proposed new §15.16 and amended §15.41 in order to provide guidelines for local

governments to establish erosion response plans that incorporate a building set-back line.

The hearing will be held in compliance with §2001.029 of the Texas Government Code to provide all interested persons a reasonable opportunity to submit data, views, or arguments, verbally or in writing on the proposed rulemaking. The hearing will be at 5:00 PM in the Town of South Padre Island Municipal Complex, Board of Aldermen Room, 2nd Floor. The Municipal Complex can be found at 4601 Padre Boulevard, two and one-half miles north of the Queen Isabella Causeway on South Padre Island. Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Gary Ainsworth at (956) 761-6458, so that appropriate arrangements can be made.

Written comments regarding the proposal may be submitted in lieu of testimony at the hearing or may be sent by U.S. mail to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or e-mail to [walter.talley@glo.state.tx.us](mailto:walter.talley@glo.state.tx.us) no later than September 15, 2008.

Further details can be found by clicking on the "View Current Open Meetings" link at <http://www.sos.state.tx.us/open/index.shtml>. Type in "General Land Office" for the agency name and click on "Find".

TRD-200804511

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: August 20, 2008



### Texas Health and Human Services Commission

#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 15, 2008, at 2:00 p.m., to receive public comment on the proposed rate for the Truman W. Smith Children's Care Center, a nursing facility which is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Permian Basin 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. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes the following per-day payment rate for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center:

Effective September 1, 2008: \$206.47.

**Methodology and Justification.** The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

**Briefing Package.** A briefing package describing the proposed payment rate will be available on August 29, 2008. Interested parties

may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; 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 rate 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.

TRD-200804492  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 19, 2008



### Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to reimburse state-owned teaching hospital direct graduate medical education (GME) costs effective September 1, 2008. The reimbursement methodology for state-owned teaching hospitals GME costs will be similar to the Medicare regulation governing reimbursement for GME costs. The Medicare GME methodology described in federal regulation 42 CFR §413.86, calculates a teaching hospitals GME payment using a hospital-specific per resident amount formula. The proposed Medicaid formula will calculate a hospital's total direct GME payments by determining (1) a base year average per resident amount multiplied by, (2) the number of current full-time residents, multiplied by (3) the proportion of the hospital's inpatient days used by Medicaid patients (the hospital's Medicaid inpatient utilization percentage). Texas Medicaid is proposing a deviation from federal regulation 42 CFR §413.86 related to the calculation of the Medicaid inpatient utilization percentage by including the nursery days in the denominator and numerator. The inclusion of nursery days in the Medicaid utilization percentage is a more accurate reflection of actual Medicaid utilization and proportioning direct GME cost associated with providing services to Medicaid patients. The base year per resident amount will be calculated based on the most recent state fiscal year with an available audited hospital cost report.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$30,079,989 for the remainder of federal fiscal year (FFY) 2008, with approximately \$18,216,441 in federal funds and approximately \$11,863,548 in state general revenue. For FFY 2009, the estimated additional aggregate expenditures will be \$31,072,628 with approximately \$18,469,570 in federal funds and approximately \$12,603,058 in state general revenue. For FFY 2010, the estimated additional aggregate expenditures will be \$32,098,025, with approximately \$18,806,233 in federal funds and approximately \$13,291,792 in state general revenue.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Chris Dockal, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human

Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1467; by facsimile at (512) 491-1998; or by e-mail at Chris.Dockal@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804376  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 14, 2008



### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed change is effective September 1, 2008.

This amendment will change the Medicaid reimbursement methodology for state-owned teaching hospitals from the current prospective payment reimbursement methodology to a Tax Equity Fiscal Responsibility Act (TEFRA) cost-based reimbursement methodology. State-owned teaching hospitals will be reimbursed their cost for inpatient hospital services based on their cost report. The state-owned teaching hospitals' initial interim rate will be based on their most recent audited tentative or final cost report completed prior to state fiscal year 2009.

This amendment will discontinue high volume payments made annually to eligible qualified private urban hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) program. This amendment modifies the reimbursement methodology for freestanding psychiatric facilities that primarily treat children under age 21. This change would allow freestanding psychiatric facilities to be exempt from the psychiatric prospective payment methodology and be reimbursed under a TEFRA cost-based reimbursement methodology. In addition, the 2008-2009 General Appropriations Act (Article II, Special Provisions, §57(c), H.B. 1, 80th Legislature, Regular Session, 2007) directed HHSC to rebase inpatient hospital rates. HHSC is adding language to the rule and state plan to accomplish the rebasing.

The state plan will become effective for claims approved for payment for admissions on or after September 1, 2008.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$23,048,248 for the remainder of federal fiscal year (FFY) 2008, with approximately \$13,958,019 in federal funds and approximately \$9,090,229 in state general revenue. For FFY 2009, the estimated additional aggregate expenditures will be \$268,241,299 with approximately \$159,442,628 in federal funds and approximately \$108,798,671 in state general revenue. For FFY 2010, the estimated additional aggregate expenditures will be \$262,214,619, with approximately \$153,631,545 in federal funds and approximately \$108,583,074 in state general revenue.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Chris Dockal, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1467; by facsimile at (512) 491-1998; or by e-mail at Chris.Dockal@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804377

Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 14, 2008



#### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to amend the state plan governing the Texas Medicaid Disproportionate Share Hospital (DSH) Program. The proposed amendment is effective on September 1, 2008.

The state plan amendment will allow the State Plan to reflect efforts to more equitably distribute DSH funds among Texas hospitals. HHSC will standardize a number of DSH program elements among DSH providers and create consistent requirements among all hospitals. The state plan amendment will incorporate language which conforms with guidance given by the Centers for Medicare and Medicaid Services pursuant to an audit by the U.S. Health & Human Services Office of Inspector General, HHSC agreed to incorporate several of its administrative practices into its Medicaid state plan.

The state plan amendment also will remove conversion factors that will restore DSH funds to approximately 60 private, urban hospitals. Finally, the state plan amendment will contain contingency language related to the state's Medicaid reform efforts. The state would like to provide more people with insurance, reduce inappropriate use of hospital emergency rooms, and make it easier for the working poor to buy employee-sponsored health coverage. HHSC plans to use a portion of non-state hospital DSH funds that are a subject of the state plan amendment to help finance Medicaid reform.

The proposed amendment is estimated to result in no change in the amount of federal funds received by the state as a result of these changes.

Interested parties may obtain copies of the proposed amendment by contacting Henry Welles by mail at Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1368; by facsimile at (512) 491-1998; or by e-mail at Henry.Welles@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804378  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 14, 2008



#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2008.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for services provided by:

- Physicians and certain other practitioners, including dentists
- Nurse Practitioners and Clinical Nurse Specialists

Physician Assistants

Providers of Family Planning Services

Providers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

Providers of Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) Services

The proposed amendments are estimated to result in an additional annual aggregate expenditure of \$1,343,620 for federal fiscal year (FFY) 2008, with approximately \$815,161 in federal funds and \$528,459 in State General Revenue (GR). For FFY 2009, the estimated additional aggregate expenditure is \$16,582,918, with approximately \$10,015,918 in federal funds and \$6,567,000 in GR. For FFY 2010, the estimated additional aggregate expenditure is \$18,013,656, with approximately \$10,728,549 in federal funds and \$7,285,107 in GR.

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804394  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 15, 2008



#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2008.

The amendment will modify the reimbursement methodology for School Health and Related Services (SHARS) delivered by school districts under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) program, which in Texas is known as Texas Health Steps (THSteps) by changing the dates covered by the 2008 SHARS Cost Report from the state fiscal year (i.e., September 1, 2007, through August 31, 2008) to a 13-month period (i.e., September 1, 2007, through September 30, 2008) as a transition to annual cost reports covering a federal fiscal year (i.e., October 1 through September 30) for 2009 and subsequent years.

The proposed amendment has no fiscal impact.

Interested parties may obtain copies of the proposed amendments by contacting Cathy Rutherford, Rate Analyst for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1361; by facsimile at (512) 491-1998; or by e-mail at Cathy.Rutherford@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804451  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 18, 2008



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2008.

The proposed amendment will adjust interim payment rates for state-owned large and small Intermediate Care Facilities for Persons with Mental Retardation in response to changes in costs to providers.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$4,376,238 for the remainder of federal fiscal year (FFY) 2008 (September 1, 2008, through September 30, 2008), with approximately \$2,605,175 in federal funds and approximately \$1,771,064 in state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of \$52,514,859, with approximately \$31,262,096 in federal funds and approximately \$21,252,763 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804489  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 19, 2008



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2008.

The proposed amendment will revise the definition of a pediatric care nursing facility. Currently, a pediatric care nursing facility must maintain an average daily census of 80% or more children. The amendment will modify this requirement to allow for a portion of the required percentage of children to include recipients over the age of 22 who were at or below 22 years of age when they were admitted to the pediatric care facility. As well, the amendment will specify a higher percentage requirement for distinct units within a nursing facility.

The proposed amendment is not expected to have an impact on the annual aggregate expenditures for the nursing facility program.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Cilla Hammer by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1372; by facsimile at (512) 491-1998; or by e-mail at cilla.hammer@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804493  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 19, 2008



**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Cleveland	Premier Cardiovascular Consultants	L06179	Cleveland	00	08/18/08
El Paso	Michael J. Deluca, M.D. P.A.	L06178	El Paso	00	07/29/08
Throughout Tx	Professional Service Industries, Inc.	L06169	Harker Heights	00	08/12/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Abilene Imaging Center LLC	L05687	Abilene	08	08/18/08
Alvin	Solutia, Inc.	L00219	Alvin	83	08/13/08
Amarillo	Amarillo Cardiovascular Center PC	L05577	Amarillo	06	08/01/08
Austin	ARA Imaging	L05862	Austin	37	07/31/08
Austin	St. David's Healthcare Partnership LP LLP DBA North Austin Medical Center	L04910	Austin	78	07/30/08
Austin	Columbia St. David's Healthcare System LP DBA South Austin Hospital	L03273	Austin	78	07/31/08
Austin	Austin Nuclear Pharmacy, Inc.	L05591	Austin	09	08/04/08
Baytown	Edward W. Leahey, M.D. P.A.	L06014	Baytown	01	07/29/08
Beaumont	ExxonMobil Oil Corporation	L00603	Beaumont	86	08/01/08
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP DBA Bedford Imaging Center	L03455	Bedford	47	07/30/08
Channelview	Tapco International, Inc. DBA Tapco Enpro International	L04990	Channelview	25	07/29/08
Clarksville	East Texas Medical Center Clarksville DBA ETMC Clarksville	L02978	Clarksville	24	08/14/08
Clifton	Goodall Witcher Healthcare Foundation	L03427	Clifton	15	08/07/08
College Station	Energy Laboratories, Inc.	L06171	College Station	01	08/12/08
Corpus Christi	Valero Refining - Texas LP DBA Valero Bill Greehey Refinery	L03360	Corpus Christi	28	08/15/08
Corpus Christi	Associates in Heart Disease DBA The Heart Clinic of Corpus Christi	L05023	Corpus Christi	15	08/18/08
Cypress	Houston Interventional Cardiology P.A.	L05470	Cypress	05	08/18/08
Dallas	Baylor University Medical Center	L01290	Dallas	90	07/30/08
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	10	08/05/08
Dallas	Afridi Heart Care P.A.	L06005	Dallas	02	08/18/08
Duncanville	Littleton Inspection Services	L04835	Duncanville	09	07/30/08
El Paso	Tenet Hospitals Limited DBA Sierra Providence East Medical Center	L06152	El Paso	01	08/11/08
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L04342	Houston	59	08/01/08
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05455	Houston	16	08/01/08
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	42	07/31/08
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	15	07/31/08
Houston	Institute of Biosciences and Technology	L04681	Houston	29	07/29/08
Houston	Rice University Department of Earth Science MS-126	L05986	Houston	01	07/29/08
Houston	Zaheer Amer, M.D. P.A.	L05993	Houston	01	08/05/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Harris County Hospital District DBA LBJ General Hospital	L04412	Houston	36	08/04/08
Houston	The Methodist Hospital	L00457	Houston	160	08/05/08
Houston	Digirad Imaging Solutions, Inc.	L05414	Houston	29	08/18/08
Houston	Willowbrook Cardiovascular Associates P.A.	L05093	Houston	14	08/18/08
Houston	American Diagnostic Tech LLC	L05514	Houston	49	08/18/08
Houston	Columbia/HCA Healthcare Corporation DBA Spring Branch Medical Center	L02473	Houston	68	08/15/08
Houston	Hall Garcia Cardiology Associates	L05431	Houston	04	08/05/08
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	34	08/05/08
Houston	Framo Engineering Houston, Inc.	L05867	Houston	03	08/06/08
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	137	08/05/08
Irving	Las Colinas Surgery Center LTD. DBA Las Colinas Surgery Center	L05651	Irving	02	07/29/08
Irving	Columbia Medical Center of Las Colinas, Inc. DBA Las Colinas Medical Center	L05084	Irving	15	08/18/08
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	63	08/01/08
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	64	08/07/08
Lewisville	Texas Oncology P.A. DBA Lake Vista Cancer Center	L05526	Lewisville	15	08/08/08
Lubbock	Texas Tech University Environmental Health and Safety	L01536	Lubbock	86	08/04/08
Midland	Diabetes Center of the Southwest	L03238	Midland	15	07/29/08
Mont Belvieu	Belvieu Environmental Fuels	L04679	Mont Belvieu	05	08/12/08
Nassau Bay	Malladi S. Reddy, M.D.	L06165	Nassau Bay	01	08/18/08
North Richland Hills	Columbia N. Hills Hospital Subsidiary LP DBA North Hills Hospital	L02271	N Richland Hills	56	07/30/08
Odessa	Odessa Heart Institute	L05439	Odessa	06	07/29/08
Odessa	University of Texas of the Permian Basin	L02695	Odessa	15	08/01/08
Pampa	Titan Specialties LTD.	L04920	Pampa	12	08/12/08
Pasadena	Mohamed O. Jeroudi, M.D. P.A.	L05753	Pasadena	11	08/07/08
Plano	Plano Heart Center P.A.	L05673	Plano	03	07/29/08
Port Lavaca	Union Carbide Corporation A Subsidiary of the Dow Chemical Company Seadrift Operations	L00051	Port Lavaca	89	07/29/08
Richmond	Oakbend Medical Center	L02406	Richmond	49	07/30/08
San Antonio	Salvatore A. Barbaro, III., M.D. P.A.	L05680	San Antonio	06	08/01/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	245	08/19/08
San Marcos	Texas State University	L03321	San Marcos	27	07/30/08
Seguin	American Biological Technologies, Inc.	L04265	Seguin	08	08/11/08
Texas City	CHCA Mainland LP DBA Mainland Medical Center	L02577	Texas City	34	07/29/08
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	61	07/29/08
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	62	08/06/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	13	08/18/08
The Woodlands	Lexicon Pharmaceuticals, Inc.	L04932	The Woodlands	20	08/11/08
Throughout Tx	Eagle NDT LLC	L06176	Abilene	01	08/04/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	85	08/07/08
Throughout Tx	J-W Wireline Company	L06132	Addison	05	08/04/08
Throughout Tx	Mactec Engineering and Consultants, Inc.	L05490	Addison	13	08/15/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	188	07/29/08
Throughout Tx	Dyess-Peterson Testing Laboratory, Inc.	L01123	Amarillo	50	07/30/08
Throughout Tx	Applied Standards Inspection, Inc.	L03072	Beaumont	103	08/01/08
Throughout Tx	3M Company	L00918	Brownwood	40	07/29/08
Throughout Tx	Brazos Valley Inspection Services, Inc.	L02859	Bryan	67	08/08/08
Throughout Tx	Phoenix Non Destructive Testing Company	L04454	Channelview	55	08/05/08
Throughout Tx	N-Spec Quality Services, Inc.	L05113	Corpus Christi	32	07/31/08
Throughout Tx	Diamondback Energy Service DBA Diamondback Pumping Services L.P.	L06016	Cresson	06	08/07/08
Throughout Tx	Ed Bell Construction Company	L05703	Dallas	02	07/30/08
Throughout Tx	Giles Engineering Associates, Inc.	L04919	Dallas	12	08/01/08
Throughout Tx	United States Environmental Services LLC	L05801	Deer Park	03	07/29/08
Throughout Tx	IRISNDT, Inc.	L04769	Deer Park	61	08/08/08
Throughout Tx	IRISNDT, Inc.	L04769	Deer Park	60	08/05/08
Throughout Tx	IRISDNT, Inc.	L04769	Deer Park	62	08/13/08
Throughout Tx	Tucker Energy Services, Inc.	L06157	Denton	01	08/04/08
Throughout Tx	Tucker Energy Services, Inc.	L06157	Denton	02	08/07/08
Throughout Tx	Fugro Consultants LP	L05843	Fort Worth	04	08/06/08
Throughout Tx	The Dow Chemical Company Texas Operations	L00451	Freeport	84	08/01/08
Throughout Tx	Vulcan Construction Materials LP	L05382	Helotes	06	07/30/08
Throughout Tx	Testmasters, Inc.	L03651	Houston	29	08/05/08
Throughout Tx	TWE Testing Services LLC	L06134	Houston	01	08/06/08
Throughout Tx	Nuclear Imaging Services	L05775	Houston	44	07/30/08
Throughout Tx	Varco LP FKA Tuboscope Vetco International, Inc.	L00287	Houston	123	07/30/08
Throughout Tx	H & G Inspection Company, Inc. DBA Statewide Maintenance Company	L02181	Houston	227	08/12/08
Throughout Tx	Goolsby Testing Laboratories, Inc.	L03115	Humble	93	07/30/08
Throughout Tx	Oceaneering International, Inc. Solus Schall Division	L04463	Ingleside	63	08/05/08
Throughout Tx	Perf-O-Log, Inc.	L05478	Iowa Colony	20	08/12/08
Throughout Tx	Hi-Tech Testing Service Inc	L05021	Longview	71	08/12/08
Throughout Tx	American Surveys, Inc.	L02086	Manvel	15	08/07/08
Throughout Tx	L & G Engineering Laboratory LLC	L05647	Mercedes	08	08/01/08
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	34	08/12/08
Throughout Tx	Big State X-Ray	L02693	Odessa	71	08/06/08
Throughout Tx	Allen Inspection Service	L03003	Odessa	11	08/12/08
Throughout Tx	Panhandle Perforators, Inc.	L03065	Pampa	12	08/08/08
Throughout Tx	Conam Inspection & Engineering, Inc.	L05010	Pasadena	146	07/28/08
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	49	08/06/08
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	86	08/11/08
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	50	08/15/08
Throughout Tx	Duininck Brothers, Inc.	L03957	Roanoke	13	07/30/08
Throughout Tx	Frost Geosciences, Inc.	L06015	San Antonio	02	08/01/08
Throughout Tx	Ludlum Measurements, Inc.	L01963	Sweetwater	81	08/14/08
Throughout Tx	Blazer Inspection, Inc.	L04619	Texas City	55	08/12/08
Throughout Tx	B.J. Services Company USA	L02684	Tomball	60	08/07/08
Vernon	American Electric Power-Public Service Co. of Oklahoma	L03481	Vernon	19	08/07/08
Webster	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05475	Webster	14	07/31/08



**RENEWAL OF LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Beaumont	ExxonMobil Corporation DBA ExxonMobil Chemical Company Beaumont Polyethylene Plant	L02316	Beaumont	38	07/30/08
Freeport	BASF Corporation	L01021	Freeport	53	08/13/08

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
El Paso	E + Pet Imaging XXIV LP Pet Imaging of El Paso	L05981	El Paso	03	08/05/08
Throughout Tx	San Antonio River Authority	L02706	San Antonio	14	08/13/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25, Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200804505  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: August 20, 2008



**Notice of Public Hearings Schedule for Development and Review of Block Grant Funds**

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code, §§300w et seq), the Texas Department of State Health Services (DSHS) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2009. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a work plan) of the intended use of block grant funds in advance of each FFY. Each state is required to hold hearings and to make proposals of these descriptions public within each state in such a manner as to facilitate comments.

In FFY 2009, six activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services, border health and colonias, behavioral risk factor surveillance system, trauma registry, local health departments, and Health Service Regions.

The PHHS Block Grant award for FFY 2008 was \$3,990,969. Of this amount, \$510,620 was required to be used for sexual assault prevention and crisis services.

DSHS has prepared the following schedule for the development and review of the 2009 Work Plan for the PHHSBG. In September of 2008, DSHS will hold public hearings in four Health Service Regions (HSRs):

- September 15, 2008 (4:00 p.m. - 6:00 p.m.)  
 Health Service Region 7, 1100 West 49th Street, Room K-100, Austin, Texas
- September 15, 2008 (10:00 a.m.)  
 Health Service Region 9/10, 401 East Franklin, Room 250, El Paso, Texas
- September 15, 2008 (2:00 p.m.)  
 Health Service Region 4/5 North, 1517 West Front Street, Room 257, Tyler, Texas
- September 17, 2008 (4:00 p.m. - 6:00 p.m.)  
 Health Service Region 2/3, 1301 South Bowen, Suite 200, Room 2210, Arlington, Texas

Following these hearings, DSHS will summarize and consider the impact of the public comments received. DSHS will then notify the public of the availability of a published summary of these hearings. In October of 2008, DSHS will prepare the FFY 2009 Work Plan for the PHHSBG and forward it to the federal government.

Please note that DSHS will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments

regarding the PHHSBG may be submitted through September 24, 2008, to Peggy Belcher, Block Grant Coordinator, Grant Coordination and Funds Management, MC 4501, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, or via email at [peggy.belcher@dshs.state.tx.us](mailto:peggy.belcher@dshs.state.tx.us). For further information, call (512) 458-7111, extension 6562.

TRD-200804373

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: August 14, 2008

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## Texas Department of Housing and Community Affairs

### HOME Investment Partnerships Program 2008 Single Family Notice of Funding Availability (NOFA)

Owner-Occupied Housing Assistance, Tenant-Based Rental Assistance, and Homebuyer Assistance Programs

#### 1) Summary.

(a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of \$23,034,118 in funding from the HOME Investment Partnerships Program (HOME) funds for single family housing programs including owner-occupied housing assistance, homebuyer assistance, and tenant-based rental assistance to assist low income Texans. As published in the 2008 State of Texas Consolidated Plan One-Year Action Plan, \$16,123,882 is available for the Owner-Occupied Housing Assistance (OCC) Program, \$3,455,118 is available for the Homebuyer Assistance (HBA) Program, and \$3,455,118 is available for the Tenant-Based Rental Assistance (TBRA) Program.

(b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

#### (2) Allocation of Funds.

(a) These funds are made available through the Department's 2008 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD) and may also include uncommitted, deobligated and program income HOME funds. The funds are set-aside for eligible applicants proposing to provide assistance to eligible homeowners in need of rehabilitation or reconstruction of their primary residence, homebuyers for the acquisition including downpayment and closing costs toward the purchase of a home, and households seeking tenant-based rental assistance. Households assisted with HOME funds must be at or below 80% of the Area Median Family Income (AMFI), as defined by HUD.

(b) In accordance with §2306.111, Texas Government Code, housing funds awarded in the HOME Program must be allocated utilizing the Regional Allocation Formula (RAF) developed by the Department. Funds are allocated for each Program Activity to each Uniform State Service Region and rural and urban area types.

(c) In accordance with 10 TAC §53.48(a) this NOFA will be an open application cycle. Funds will first be available for HOME Program Activities, specified in this NOFA, utilizing the RAF for each activity, on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis utilizing the funds allocated by the RAF until the earlier of the request of all funds or 5:00 p.m. Wednesday, October 15, 2008, regardless of method of delivery.

(d) On Thursday, October 16, 2008 funds for each HOME Program Activity not requested under the open cycle utilizing the RAF will be made available statewide (excluding PJs) in any Uniform State Service Region. Funds will remain set-aside within each HOME Program Activity. Applications will be accepted by the Department on an on-going basis until the earlier of the request of all funds or 5:00 p.m. Thursday, January 15, 2009, regardless of method of delivery.

(e) On Friday, January 16, 2009, any funds not requested under the statewide, Program Activity specific open cycle, will be made available in any Uniform State Service Region (excluding PJs) for any eligible HOME Program Activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until the earlier of the award of all funds or 5:00 p.m. Thursday, April 30, 2009, regardless of method of delivery.

(f) Requirements of the Regional Allocation Formula and 10 TAC §53.48(a) will be utilized in prioritizing funding recommendations. Applicants may apply for the maximum allowed in each activity even though the amount of available funds utilizing the RAF may be less. However, only the maximum allowable under the RAF will be recommended for award during the RAF period.

#### (3) Limitation on Funds.

(a) Funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

(b) The Department awards HOME funds to eligible entities and the maximum award amount may not exceed \$375,000 for Owner-Occupied Housing Assistance, \$300,000 for Homebuyer Assistance, and \$300,000 for Tenant-Based Rental Assistance. Up to \$500,000 may be awarded to Homebuyer Assistance applicants whose Service Area includes multiple counties within a Uniform State Service Region.

(c) With the exception of Tenant-Based Rental Assistance, the minimum HOME assistance amount per unit may not be less than \$1,000 per HOME assisted unit. The per-unit subsidy may not exceed the per-unit dollar limits established by the U. S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the housing is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilitation or reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

(d) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85 for each type of activity including:

(i) OCC (Reconstruction) - Maximum Percentage for Administrative Costs based on Total Project Costs is two percent (2%).

(ii) OCC (Rehabilitation Only) - Maximum Percentage for Administrative Costs based on total Project Costs is two percent (2%).

(iii) HBA (Downpayment & Closing Costs Only) - Maximum Percentage for Administrative Costs is four percent (4%).

(iv) TBRA - Maximum Percentage for Administrative Costs is four percent (4%).

(4) Eligible and Prohibited Activities.

(a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.31 for OCC, §53.32 for HBA, and §53.33 for TBRA.

(b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

(5) Eligible and Ineligible Applicants.

(a) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, Public Housing Authorities (PHAs), and for-profit entities.

(b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(6) Matching Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

(7) Affordability Requirements.

(a) Applicants should be aware that there are minimum affordability periods necessary for HOME-assisted housing. The unit assisted must be the primary residence of the homebuyer. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. Awarded entities will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department. Each loan to an assisted homebuyer and homeowners must be payable to the Department. Each loan for reconstruction or rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence.

(b) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

(c) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived.

The amount due will be based on the pro-rata share number of years of the remaining loan term.

(d) In the event the home is sold (voluntary or involuntary), the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

(8) Site and Construction Restrictions.

(a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

(b) At the completion of the assistance, all properties must meet the International Residential Code and local building codes. If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

(c) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(d) Rental units secured through HOME assistance must be inspected prior to occupancy and must comply with Housing Quality Standards (HQS) established by HUD in 24 CFR Part 92.

(9) Owner-Occupied Housing Assistance (OCC).

(a) A total of \$16,123,882 in funding released under this NOFA may be used to administer an Owner-Occupied Housing Assistance Program to provide eligible households with loans for the rehabilitation or reconstruction of existing owner-occupied housing and earning 80 percent (80%) or less of the Area Median Family Income (AMFI) as defined by HUD. As defined in 10 TAC §53.31(d)(1), the home must be the principal residence of the homeowner.

(b) Table 1. OCC Regional, Rural, and Urban Funding Amounts, shows the allocation of funds to the 13 State Service Regions and the corresponding rural and urban distribution within each region.

**Table 1. OCC Regional, Rural, and Urban Funding Amounts**

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	910,061	5.6%	909,892	100.0%	169	0.0%
2	Abilene	597,429	3.7%	584,786	97.9%	12,643	2.1%
3	Dallas/Fort Worth	2,851,824	17.7%	875,549	30.7%	1,976,275	69.3%
4	Tyler	2,049,849	12.7%	1,598,672	78.0%	451,177	22.0%
5	Beaumont	947,455	5.9%	858,034	90.6%	89,421	9.4%
6	Houston	1,145,014	7.1%	469,856	41.0%	675,158	59.0%
7	Austin/Round Rock	685,992	4.3%	386,245	56.3%	299,747	43.7%
8	Waco	756,726	4.7%	402,488	53.2%	354,238	46.8%
9	San Antonio	823,099	5.1%	516,486	62.7%	306,613	37.3%
10	Corpus Christi	1,166,337	7.2%	966,385	82.9%	199,952	17.1%
11	Brownsville/Harlingen	2,833,963	17.6%	2,054,998	72.5%	778,965	27.5%
12	San Angelo	818,629	5.1%	571,332	69.8%	247,297	30.2%
13	El Paso	537,503	3.3%	298,381	55.5%	239,122	44.5%
	<b>Total</b>	<b>\$16,123,882</b>	<b>100.0%</b>	<b>\$10,493,105</b>	<b>65.1%</b>	<b>\$5,630,777</b>	<b>34.9%</b>

(c) As per 10 TAC §53.47(a)(1), the maximum award amount for OCC shall not exceed \$375,000 per Application. In accordance with 10 TAC §53.85, up to two percent (2%) of the requested project funds may be requested for administrative costs.

(d) Owner-Occupied Housing Assistance to a household is provided in the form of a loan and in accordance with 10 TAC §53.31(g), the maximum amount of assistance (including soft costs) to an eligible household is limited as follows:

(i) Rehabilitation that is Reconstruction for 1 - 4 person Household: \$60,000;

(ii) Rehabilitation that is Reconstruction for 5 - 6 person Household: \$67,500;

(iii) Rehabilitation that is Reconstruction for 7 or more person Household: \$75,000; and,

(iv) Rehabilitation that is not Reconstruction: \$30,000.

(e) In accordance with 10 TAC §53.72(a)(1), the contract term for OCC Program Activity shall not exceed 22 months and performance under the contract will be evaluated according to the following benchmarks:

(i) 6 months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(ii) 8 months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(iii) 12 months, 100% of funds must be committed to Households to be assisted;

(iv) 15 months, 100% of Household's Loans must be closed, if applicable;

(v) 20 months, 100% of construction must be complete for all Households to be assisted; and,

(vi) 22 months, 100% funds drawn and 100% of match requirement supplied.

(10) A minimum threshold score of 25 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(i) Affordable Housing Needs Score: Points range from zero to seven as published by the Department. Maximum 7 points.

(ii) Match: Per 24 CFR §92.218, the Department will recognize eligible forms of matching contributions made from nonfederal resources. Table 2. OCC Housing Program Required Community Match Contributions, will be used to determine match requirement and associated points:

**Table 2. OCC Housing Program Required Community Match Contributions**

City Population	County Population	Required Match % of Project Funds Requested	Points	Additional Points
< 3000	< 20,000	5%	10	10 points for each additional percent of match provided
3,000 - 5,000	20,000 - 75,000	10%	10	7 points for each additional percent of match provided
> 5,000	> 75,000	12.5%	10	5 points for each additional percent of match provided

(iii) Income Targeting: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. Table 3. Point Incentives for Income Targeting, will be used to determine income targeting requirements and associated points. For those counties where the Area Median Family Income (AMFI) is at or below the state

average median family income the applicant will receive the same number of points for income targeting when serving households at or below 50% AMFI as those counties exceeding the statewide median income targeting households at or below 30% AMFI. Maximum 20 points.

**Table 3. Point Incentives for Income Targeting**

Income Target	Points
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(iv) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least \$120,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget.

(v) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training

assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application submission date.

(vi) Description of Demand: All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations, assumptions, and pictures of housing stock must be included.

(11) Homebuyer Assistance (HBA).

(a) Approximately \$3,455,118 of HOME Funds released under this NOFA shall be used to administer a Homebuyer Assistance Program, providing downpayment and closing cost assistance (including soft costs) to eligible first time homebuyers for the acquisition of affordable single family housing.

(b) Table 4. HBA Regional, Rural, and Urban Funding Amounts, shows the allocation of funds to the 13 State Service Regions and the corresponding rural and urban distribution within each region.

**Table 4. HBA Regional, Rural, and Urban Funding Amounts**

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	195,013	5.6%	194,977	100.0%	36	0.0%
2	Abilene	128,020	3.7%	125,311	97.9%	2,709	2.1%
3	Dallas/Fort Worth	611,105	17.7%	187,618	30.7%	423,488	69.3%
4	Tyler	439,253	12.7%	342,573	78.0%	96,681	22.0%
5	Beaumont	203,026	5.9%	183,864	90.6%	19,162	9.4%
6	Houston	245,360	7.1%	100,683	41.0%	144,677	59.0%
7	Austin/Round Rock	146,998	4.3%	82,767	56.3%	64,232	43.7%
8	Waco	162,156	4.7%	86,247	53.2%	75,908	46.8%
9	San Antonio	176,378	5.1%	110,676	62.7%	65,703	37.3%
10	Corpus Christi	249,929	7.2%	207,082	82.9%	42,847	17.1%
11	Brownsville/Harlingen	607,278	17.6%	440,357	72.5%	166,921	27.5%
12	San Angelo	175,421	5.1%	122,428	69.8%	52,992	30.2%
13	El Paso	115,179	3.3%	63,939	55.5%	51,240	44.5%
<b>Total</b>		<b>\$3,455,118</b>	<b>100.0%</b>	<b>\$2,248,523</b>	<b>65.1%</b>	<b>\$1,206,595</b>	<b>34.9%</b>

(c) As defined in 10 TAC §53.47(a)(2), the maximum award amount for HBA shall not exceed \$300,000 per Application; however, up to \$500,000 may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region. In accordance with the 2008 Consolidated Plan-One Year Action Plan, up to four percent (4%) of the requested project funds may be requested for administrative costs.

(d) In accordance with 10 TAC §53.32(e), the maximum amount of assistance for downpayment and closing cost assistance (including soft costs) to an eligible household is \$10,000.

(e) The following first lien purchase loan requirements are imposed for households receiving Homebuyer Assistance:

- (i) No adjustable rate mortgage loans (ARMs) are allowed;
- (ii) No mortgages with a loan to value equal to or greater than 100% are allowed;
- (iii) No subprime mortgage loans are allowed;
- (iv) An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and,
- (v) The debt to income ratio (back-end ratio) may not exceed 45%.

(f) HBA assistance will be in the form of a 0% interest 5 or 10 year deferred forgivable loan depending on the amount of assistance, creating a 2nd or 3rd lien with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(g) In accordance with 10 TAC §53.72(a)(2), the contract term for the HBA Program Activity shall not exceed 24 months and performance

under the contract will be evaluated according to the following benchmarks:

- (i) 6 months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;
  - (ii) 12 months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;
  - (iii) 18 months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and
  - (iv) 24 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.
- (h) A minimum threshold score of 15 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:
- (i) Affordable Housing Needs Score: Points range from zero to seven, as published by the Department. Maximum 7 points.
  - (ii) Match: Table 5. HBA Program Required Community Match Contributions, will be used to determine match requirement and associated points:

**Table 5. HBA Program Required Community Match Contributions**

Required Match % of Project Funds Requested	Points	Additional Points
5%	10	10 points for each additional percent of match provided

(iii) Income Targeting: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. Table 6. Point Incentives for Income Targeting, will be used to determine income targeting requirements and associated points. Maximum 20 points.

**Table 6. Point Incentives for Income Targeting**

Income Target	Points
0% to 29.99% of units at 60% AMFI	3
30% to 59.99% of units at 60% AMFI	7
60% to 100% of units at 60% AMFI	10

(iv) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least \$60,000 to facilitate administration of the program during the Department’s disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant’s resolution and budget.

(v) Resolution: All applications submitted must include an original resolution from the Applicant’s direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person’s title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

(vi) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

(vii) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of 8 hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

(12) Tenant-Based Rental Assistance (TBRA).

(a) Approximately \$3,455,118 of HOME funds released under this NOFA shall be used to administer a Tenant-Based Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits to tenants earning 80 percent (80%) or less of the Area Median Family Income (AMFI) as defined by HUD. In accordance with 24 CFR §92.216, not less than 90% of the households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD.

(b) Table 7. TBRA. Regional, Rural, and Urban Funding Amounts, shows the allocation of funds to the 13 State Service Regions and the corresponding rural and urban distribution within each region.

**Table 7. TBRA. Regional, Rural, and Urban Funding Amounts**

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	195,013	5.6%	194,977	100.0%	36	0.0%
2	Abilene	128,020	3.7%	125,311	97.9%	2,709	2.1%
3	Dallas/Fort Worth	611,105	17.7%	187,618	30.7%	423,488	69.3%
4	Tyler	439,253	12.7%	342,573	78.0%	96,681	22.0%
5	Beaumont	203,026	5.9%	183,864	90.6%	19,162	9.4%
6	Houston	245,360	7.1%	100,683	41.0%	144,677	59.0%
7	Austin/Round Rock	146,998	4.3%	82,767	56.3%	64,232	43.7%
8	Waco	162,156	4.7%	86,247	53.2%	75,908	46.8%
9	San Antonio	176,378	5.1%	110,676	62.7%	65,703	37.3%
10	Corpus Christi	249,929	7.2%	207,082	82.9%	42,847	17.1%
11	Brownsville/Harlingen	607,278	17.6%	440,357	72.5%	166,921	27.5%
12	San Angelo	175,421	5.1%	122,428	69.8%	52,992	30.2%
13	El Paso	115,179	3.3%	63,939	55.5%	51,240	44.5%
<b>Total</b>		<b>\$3,455,118</b>	<b>100.0%</b>	<b>\$2,248,523</b>	<b>65.1%</b>	<b>\$1,206,595</b>	<b>34.9%</b>

(c) In accordance with 10 TAC §53.47(a)(3) the maximum award amount for TBRA shall not exceed \$300,000 per Application. In accordance with the 2008 Consolidated Plan-One Year Action Plan, up to four percent (4%) of the requested project funds may be requested for administrative costs. In accordance with 10 TAC §53.72(a)(3) the contract term for TBRA shall not exceed 36 months, however, individual household assistance is limited to 24 months.

(d) Through the TBRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed twenty-four (24) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

(e) As per 10 TAC §53.33, the Household must comply with the following initial eligibility requirements: participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and, meet all other eligibility requirements.

(f) As defined in 10 TAC §53.33(d) the rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and must comply with Housing Quality Standards established by HUD.

(g) In accordance with 10 TAC §53.72(a)(3), the contract term for the TBRA Program shall not exceed 36 months and performance under the contract will be evaluated according to the following benchmarks:

(i) 6 months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

(ii) 9 months, application intake complete for 75% for Households to be assisted;

(iii) 12 months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

(iv) 18 months, 100% of funds already committed and 35% of funds drawn;

(v) 24 months, 100% of funds already committed and 50% of funds drawn; and,

(vi) 36 months, 100% of funds already committed and 100% of funds drawn.

(h) A minimum threshold score of 15 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(i) Affordable Housing Needs Score: Points range from zero to seven, as published by the Department. Maximum 7 points.

(ii) Income Targeting - Maximum 20 points: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. Table 8. Point Incentives for Income Targeting, will be used to determine income targeting requirements and associated points. For those counties where the area median family income (AMFI) is at or below the state average median family income will receive the same number of points for income targeting when serving households at or



below 50% AMFI as those counties exceeding the statewide median income targeting households at or below 30% AMFI.

**Table 8. Point Incentives for Income Targeting**

<b>Income Target</b>	<b>Points</b>
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(iii) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department’s disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount must be included in the Applicant’s resolution and budget.

(iv) Resolution: All applications submitted must include an original resolution from the Applicant’s direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person’s title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

(v) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

(vi) TBRA Self Sufficiency Program: It will be a threshold requirement for each Applicant to submit a proposed detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent housing by the end of the 24-month rental assistance contract term.

(1) The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

(a) A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of

support that details how the assisted household will afford to be self-sufficient by the end of the 24-month rental assistance.

(b) If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

(c) Specific housing goals that will be completed on or before the end of the 24-month assistance period include: finding permanently subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

(13) Review Process.

(a) Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date". Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

(i) The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within 45 days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

(ii) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

(c) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

(d) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

(e) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

(f) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(g) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

#### (14) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Thursday, April 30, 2009, regardless of method of delivery.

(b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

(c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the

Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Per §2306.147(b), Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(h) Application Workshop: the Department will present application workshops in locations throughout the State which will provide an overview of the HOME Program Activities eligible under this NOFA and will also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application workshop schedule and registration will be posted on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

(i) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

(j) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200804477

Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: August 19, 2008



Request for Application to Administer the Community Services Block Grant, the Weatherization Assistance Program, and the Comprehensive Energy Assistance Program in Duval and McMullen Counties

**I. Background and Purpose.**

The Texas Department of Housing and Community Affairs (the Department) is seeking interested organizations to submit an application to administer the Community Services Block Grant (CSBG), the Weatherization Assistance Program (WAP), and the Comprehensive Energy Assistance Program (CEAP) in **Duval and McMullen Counties**.

The purpose of CSBG is to reduce poverty, revitalize low-income communities, and empower low-income individuals and families to become self-sufficient. This is accomplished by using CSBG funds to support local efforts to identify, reduce, or eliminate the causes of poverty and to help solve problems that block the achievement of self-sufficiency among individuals.

The purpose of the WAP is to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety, especially low income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

The purpose of the CEAP is to provide energy assistance to eligible client households assisting clients with the greatest need first. Assistance can be provided for energy bills and/or some households can qualify for repair and/or replacement of inefficient heating and cooling unit or appliances in their household.

**II. Request for Application (RFA).**

Applicant organizations that submit an application must apply for and be willing to administer all three programs in one or both counties, Duval and or McMullen: CSBG, WAP and CEAP. The applicant organization(s) chosen through this competitive process will be offered a CSBG, WAP, and CEAP contract for Program Year 2008 and each year thereafter as long as they remain in good standing.

The estimates for federal fiscal year 2008 funding for Duval County is \$50,000 CSBG, \$71,104 CEAP, \$23,242 WAP and for McMullen County is \$50,000 CSBG, \$59,991 CEAP, and \$18,067 WAP. Future funding will be based on the State's method of distribution approved by each program's federal funding entity.

Interested applicants must meet the requirements set forth in the application and submit a complete application by the deadline of **Tuesday, September 30, 2008 by 5:00 p.m.**

The RFA will be posted on the Department's web-site <http://www.tdhca.state.tx.us> on the date the notice appears in the *Texas Register*. Organizations on the Department's e-mail subrecipient list for CSBG, WAP, and CEAP and the Department's list serve will receive an e-mail notification that the RFA is available on the Department's web-site.

**Deadline for Receipt: Tuesday, September 30, 2008 by 5:00 p.m. CST**

**Mailing Address:**

Al Almaguer

Manager of Community Services Section  
Texas Department of Housing and Community Affairs  
Post Office Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

**Courier Delivery:**

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

**Hand Delivery:** If you are hand delivering the Proposal, contact Rita Gonzales-Garza at (512) 475-3905 or Al Almaguer (512) 475-3908 when you arrive at the lobby of our building for Proposal acceptance.

**Questions** pertaining to the contents of the application packet are to be directed to Al Almaguer, Manager for Community Services Section at email address [al.almaguer@tdhca.state.tx.us](mailto:al.almaguer@tdhca.state.tx.us) or by phone (512) 475-3908 or to Michael De Young, Manager for Energy Assistance Section at email address [michael.deyoung@tdhca.state.tx.us](mailto:michael.deyoung@tdhca.state.tx.us) or by phone at (512) 475-2125.

TRD-200804379

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 14, 2008



**Office of Injured Employee Counsel**

**Correction of Error**

The Office of Injured Employee Counsel proposed amendments to 28 TAC §276.10, concerning ombudsmen training and continuing education. The notice was published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6547).

The notice contained an error under subsection (c)(1)(H) on page 6549, right column. The words "continuing education" were shown as underlined text to indicate proposed new language. Because no changes were proposed to subparagraph (H), the words should not be underlined. The subparagraph should read as follows.

"(H) providing continuing education and training, at least annually, to ombudsmen on workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures; and"

TRD-200804495



**Texas Lottery Commission**

**Instant Game Number 1099 "Texas Ranger Limited Edition Silver Series"**

The Texas Lottery Commission filed for publication Instant Game Number 1099 "Texas Ranger Limited Edition Silver Series". The document was published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6221). The procedure for winning a motorcycle, set forth in section "2.3 Procedure for Claiming Prizes", was added after the procedures were filed in the *Texas Register*. Sections 2.3.C and 2.3.D were added; section 2.3.C was renumbered to section 2.3.E; section 2.3.D was renumbered to 2.3.F; and section 2.3.E was renumbered to 2.3.G. Sections 2.3.C and 2.3.D now read as follows:

### 2.3 Procedure for Claiming Prizes.

C. MOTORCYCLE PRIZE WINNERS under the age of 21 are considered "minors" by definition under Texas Government Code 466.405. Section 466.405(c) states that if a minor wins a prize "other than prize money," the TLC shall pay the cash equivalent to an adult member of the minor's family or the minor's guardian as custodian for the minor. Payment of the cash equivalent of a prize other than prize money shall be made as a direct payment to the minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or the minor's guardian as custodian for the minor.

D. MOTORCYCLE PRIZE WINNERS over the age of 21 are not eligible to receive payment of the cash equivalent for this prize.

TRD-200804486  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: August 19, 2008

## Public Utility Commission of Texas

### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 15, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of SAB Power LLC for Retail Electric Provider (REP) Certification, Docket Number 36006 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 5, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36006.

TRD-200804488  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 19, 2008

### Notice of Application for an Amendment to a Certificate of Operating Authority

On August 15, 2008, AT&T Advanced Solutions filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50026. Applicant intends to reflect a change in ownership/control and corporate restructuring.

The Application: Application of AT&T Advanced Solutions for an Amendment to its Certificate of Operating Authority, Docket Number 36005.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 4, 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 36005.

TRD-200804487  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 19, 2008

### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on August 12, 2008, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Denton County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity Aledo Zone (Ft. Worth Metropolitan Exchange) and Weatherford Exchange. Docket Number 35992.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T's Aledo Zone of the Forth Worth Metropolitan exchange and the Weatherford exchange to allow AT&T to provide the most efficient facilities in the immediate area to Bella Vista, a new subdivision.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35992.

TRD-200804411  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 15, 2008

### Notice of Application for Service Area Exception within Roberts County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 12, 2008, for an amendment to certificated service area for a service area exception within Roberts County, Texas.

Docket Style and Number: Application of North Plains Electric Cooperative, Inc. to Amend an Electric Certificate of Convenience and Necessity for a Service Area Exception within Roberts County. Docket Number 35987.

The Application: North Plains Electric Cooperative, Inc. (NPEC) filed an application for a service area boundary exception to allow NPEC to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company d/b/a Xcel Energy (Xcel) within Roberts County, Texas. Xcel has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than September

9, 2008 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35987.

TRD-200804410  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 15, 2008



#### Notice of Application for Service Area Exception within Tom Green County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 14, 2008, for an amendment to certificated service area for a service area exception within Tom Green County, Texas.

Docket Style and Number: Application of Southwest Texas Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Tom Green County. Docket Number 35998.

The Application: Southwest Texas Electric Cooperative, Inc. (SWTEC) filed an application for a service area boundary exception to allow SWTEC to provide service to a specific customer located within the certificated service area of Concho Valley Electric Cooperative, Inc. (CVEC). CVEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than September 9, 2008, 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35998.

TRD-200804475  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 19, 2008



#### Notice of Application to Amend Certificated Service Area Boundaries in Bexar County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 14, 2008, for an amendment to certificated service area boundaries within Bexar Counties, Texas.

Docket Style and Number: Joint Application of Bandera Electric Cooperative, Inc. and CPS Energy to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Bexar County. Docket Number 35999.

The Application: Bandera Electric Cooperative, Inc. and CPS Energy seek to amend their service area boundaries within Bexar County upon request to provide service to a landowner. The proposed boundary change will align the boundary with the relevant landowner's property line.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than September 9, 2008 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35999.

TRD-200804476  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 19, 2008



#### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On August 12, 2008, I-Element, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60712. Applicant intends to relinquish its certificate.

The Application: Application of I-Element, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 35988.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 4, 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 35988.

TRD-200804412  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 15, 2008



#### Notice of Award of Major Consulting Contract

The Public Utility Commission of Texas (PUCT) announces the award of Contract No. 473-08-00292.

##### Description of Activities

The contractor will provide consulting services in connection with a study and report concerning combined heat and power (CHP) in Texas in accordance with House Bill 3693, enacted by the 80th Legislature (2007 legislative session).

##### Background Information

Section 23 of the bill created §39.912 of the Texas Utilities Code, Report on Combined Heat and Power Technology. The legislation requires the PUCT to study the installation and use of CHP technology in the state and submit a report of its findings to the 81st Legislature.

##### Services

Conduct of the Study:

The contractor shall include the following utilities in the study:

- \* Oncor
- \* CenterPoint Energy

- \* American Electric Power Company's distribution companies in Texas
- \* Texas-New Mexico Power Company
- \* Entergy Texas (Entergy)
- \* Xcel-Texas
- \* El Paso Electric Company

**Report Contents**

The report must include the following components:

1. an explanation describing CHP technology and its uses, including:
  - a. current installations of CHP technologies in Texas and their uses;
  - b. a summary of the technology and fuel sources used for CHP;
  - c. the potential for economical CHP in Texas; and
  - d. the costs of CHP, the benefits to the owner or operator, and the benefits to others.
2. an explanation of how CHP technology can be implemented in Texas to meet energy efficiency goals, including:
  - a. barriers to the use of CHP; and
  - b. policy options available to foster the adoption of CHP.

**Additional Requirements after Report Completion**

The contractor must be available to confer with and assist PUCT staff while staff prepares the report due to the Texas Legislature on January 15, 2009. Staff may require the contractor's assistance in the preparation of briefing materials for legislators. The contractor also may be asked to provide a presentation to the Commissioners at an open meeting.

**Consultant's Name and Business Address**

Summit Blue Consulting, LLC  
 1722 14th Street, Ste. 230  
 Boulder, Colorado 80302

**Contract Value and Term**

The total value of the contract will not exceed \$100,000. The contract was executed on August 13, 2008 and will expire when the PUCT accepts the final deliverable or the additional requirements after report completion, whichever comes later. The final deliverable is due December 5, 2008. The report is due to the Texas Legislature January 15, 2009.

TRD-200804397  
 Adriana A. Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: August 15, 2008



**Notice of Award of Major Consulting Contract**

The Public Utility Commission of Texas (PUCT) announces the award of Contract No. 473-08-00298.

**Description of Activities**

The contractor will provide consulting services in connection with a Notice of Violation issued by the PUCT against International Power America, Inc. (IPA).

**Background Information**

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.

**Services**

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.

**Consultant's Name and Business Address**

Energy Mark, Inc.  
 334 Satinwood Court North  
 Buffalo Grove, Illinois 60089

**Contract Value and Term**

The total value of the contract will not exceed \$150,000. The contract was executed on August 8, 2008 and will expire when the PUCT issues a final and non appealable order in PUCT Docket No. 34738. In no event will the contract term extend beyond August 31, 2009.

TRD-200804396  
 Adriana A. Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: August 15, 2008



**Request for Comments - Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zone (CREZ)**

The Public Utility Commission has initiated a rulemaking project to determine dispatch priorities for the use of CREZ transmission lines, *Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones*, Docket Number 34577. The concern that led to the initiation of this rulemaking is that wind developers might build wind generation in west Texas that significantly exceeds the capacity of the CREZ transmission, imperiling developers' investment in wind generation in CREZs. The early developers could be

accorded a priority in dispatch on the basis of the higher level of risk incurred by the early movers (the developers that made expenditures for investigating the wind resource and signing leases for wind farms before the Commission committed to building additional transmission to west Texas) than by late comers.

One of the other issues that the Commission will be facing is identifying which wind developers qualify as CREZ developers. The results of the CREZ proceeding suggest that, absent some limitation on the right to develop or a clear definition of dispatch priority, developers might develop the CREZs to a level that exceeds the CREZ transmission capacity that is built as a result of the Commission's CREZ order. The objective of this rulemaking is to accord the CREZ developers a priority in the use of the transmission system or an equivalent right that will protect their investment, if possible, through the normal operation of real-time market mechanisms and by deterring the development of generation in west Texas by other developers.

One approach to dispatch priority and managing the development in the CREZs is to auction congestion revenue rights (CRRs) for a period of years. CRRs are the standard approach for market participants to manage congestion risks in the nodal market, and CRRs could be used to provide a priority to CREZ developers, without introducing distortions in the economic dispatch of the nodal market. An auction could be conducted well in advance of the completion of CREZ transmission facilities and used to allocate CRRs to CREZ developers. In real time, the CRRs would provide CREZ resources revenue equal to the nodal price differences between the CREZ and other points on the ERCOT system. Because bids in the real-time energy market would reflect the value of production tax credits and renewable energy credits, the price differentials should also reflect these values. From a planning perspective, wind developers would consider the results of the auction for CRRs in making decisions about whether to develop generation resources in west Texas and at what level.

The Commission seeks comments on the feasibility and efficiency of the use of auctioned CRRs to effectuate dispatch priority from the CREZs and impede over-development of the CREZ transmission lines.

The Commission also seeks comments on the requirement that CREZ developers post collateral for the transmission system improvements that will be made to transmit energy from the CREZs to other parts of the state. There are questions that need to be resolved to make the collateral requirements clearer.

1. Is an auction approach like the one outlined above feasible? What processes would need to be established by ERCOT to implement this approach?
2. Is an auction approach likely to protect the revenue expectations of west Texas renewable generators that own CRRs during periods in which the transmission system is congested?
3. Is an auction approach likely to provide a useful and timely market signal to developers about the viability of additional development in renewable generation in west Texas? Explain why or why not.
4. Should the Commission, instead, adopt a physical priority, such as limiting interconnections to the CREZ transmission system? What processes would need to be established by ERCOT to implement this approach?
5. If an auction approach were adopted, how should eligibility to participate in the auction be determined? Should any non-renewable generation facilities, such as clean coal or nuclear generation, have the opportunity to participate?

6. Should any priority dispatch right be transferrable from one person to another? If so, what mechanism would be needed to track changes in ownership?

7. If an auction approach used, could it address congestion both within the CREZ and beyond its borders?

8. Regarding the financial commitments in P.U.C. Substantive Rule §25.174(c):

a. How should renewable energy developers' eligibility to post collateral in the certificate of convenience and necessity (CCN) proceedings be determined? If an auction approach is used to address dispatch priority, could the auction be conducted before the collateral is required to be posted and be used to determine eligibility to post collateral?

b. How should the total transmission cost for CREZ transmission facilities be determined? Should it differ by CREZ? Should the cost of base-case upgrades be excluded? Should one developer's collateral amount differ from another? If so, why and how?

c. Should forms of collateral other than letters of credit be permitted?

d. If CCN proceedings are filed at different times, how should the date for posting collateral be determined?

e. What rules and procedures would apply if the total capacity for which CREZ developers post collateral exceeds 100% of CREZ transmission capacity?

TRD-200804395

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 15, 2008

## **Texas Department of Transportation**

### **Aviation Division - Request for Proposals for Professional Services**

The City of Denton, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

**Airport Sponsor:** The City of Denton; Denton Municipal. **TxDOT CSJ No.** 0918DENTN. **Scope:** Prepare a Business Plan to provide an overview analysis of the airport addressing airport policy, airport building standards, airport rates and charges, market analysis, financial analysis and risk assessment; provide an assessment of business/economic development opportunities, recommend an eight to ten year strategic course of action to pursue development and to address issues at the Denton Municipal Airport.

There is no HUB goal for this project. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning 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, URL address:

<http://www.txdot.gov/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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 22, 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. The criteria for evaluating consultants for airport planning projects is located at:

<http://www.txdot.gov/services/aviation/consultant.htm>

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200804513

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: August 20, 2008

◆ ◆ ◆  
**The University of Texas System**

**Addendum to the Notice of Intent to Seek Consultant Services**

In accordance with the provisions of *Texas Government Code*, §2254.030, The University of Texas at Health Science Center - Houston has announced an addendum to the contract for consulting services more particularly described in the Notice of Intent to Seek Consultant Services related to the marketing and branding initiative published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6243) and subsequently amended as published in August 15, 2008, issue of the *Texas Register* (33 TexReg 6645).

**PROJECT:** University of Health Science Center - Houston Marketing and Branding Initiative

**IFO NO:** 744-8015-Marketing and Branding

**OWNER:** The University of Texas Health Science Center - Houston

**TO:** Prospective Bidders

This Addendum forms part of Contract Documents and modifies Bid Documents dated, July 22, 2008, with amendments and additions noted below.

The deadline for questions was Tuesday, August 12 at 4 p.m. The questions and answers that were received were as follows:

1. During Phase I regarding previous research findings:

What types of and how many studies are available?

- \* Communications Assessment
- \* Reader feedback surveys
- \* Readership focus groups
- \* Online Readership Survey

What types of topics are covered by the research?

- \* University's Communications Program
- \* Readership feedback
- \* Media Relations program
- \* Marketing and Community Relations program
- \* University-wide organization structure for the areas responsible for marketing

What time frame does the research cover?

- \* Summer 2005 and Spring 2007

2. For contacting audiences for research purposes, what type of contact information is available to use for...?

Internal Constituents

Email addresses of all staff and faculty? YES

Email addresses of all current students? YES

Email addresses of incoming students (Fall 2008)? NO

External Constituents

Email addresses for students who considered but chose not to attend? NO

Email addresses of recent MCAT participants? NO

Contact information for Houston-area opinion leaders? YES

Additional audiences may include:

- \* Development Board members
- \* Key donor lists

3. Do any of the six schools and other entities (Practice Plan, MHHS, Harris County Hospital District) have existing branding or marketing plans?

- \* Six Schools - NO
- \* Practice Plan - YES
- \* Memorial Hermann Healthcare System - YES
- \* Harris County Hospital District - YES
- \* Texas Medical Center - YES

If so, may we have access to them during the process?

\* YES, for U.T. Health Science Center - Houston entities and various levels of access through the external organizations primary contact person.

How involved will these organizations be in the process?



\* Involvement will depend on the affiliation, collaboration or cooperative agreement with The University of Texas Health Science Center at Houston

4. Phase IV - Is there any desired time frame by which this phase should be completed? This timeframe is to be provided by the proposer.

5. Are there any budgetary guidelines/goals for implementation? No budgetary guidelines are disclosed during the IFO process.

6. Logistics - for establishing travel costs, can you apply state rates or direct billing for consultants on hotels or rental cars? Is there lodging on campus that can be used by consultants? Yes, the state rate can be applied, but only on lodging. There is no lodging on our campus, but there are numerous hotels located in and around the Texas Medical Center.

7. We have determined that our agency is self performing on this IFO and will not need subcontractors. However should UTHSC decide to continue with consulting services for certain areas of the Strategic/Implementation Plan we may then decide to bring in a subcontractor. Do we need to identify subcontractors in this IFO, or would the implementation of this plan be a separate scope of work and IFO?

Please respond to exactly what is written in the IFO and do not include any "what ifs". We do not anticipate a separate scope or IFO being issued on this. HUB plans can be sent to Nina Lahasky (nina.lahasky@uth.tmc.edu) for review prior to the bid due date.

8. I have a little discomfort about providing my SSAN (3.1.9) on a document that will be distributed to so many people and may, I think, be subject to an Open Records Request. May I answer this question by pledging to provide it if awarded the project? Yes, that would be fine.

9. Can we get an org chart for all schools, size and number employed/people (need this to determine focus group numbers and sizes, and number of interviews)? You can look at our website at [www.uth.tmc.edu](http://www.uth.tmc.edu) for a listing of the schools. Also, this link <http://www.uth.tmc.edu/factbook/2007/profile/bythenumbers.htm> will provide additional information.

10. We have a vendor who is a bona fide woman-owned business. Do they have to be HUB certified/registered to qualify as part of the HUB staffing plan? Yes, the business must be HUB certified to qualify.

TRD-200804424

Francie A. Frederick  
General Counsel to the Board of Regents  
The University of Texas System  
Filed: August 18, 2008



#### Notice of Intent to Amend Existing Consulting Contract

As required by the provisions of *Texas Government Code*, §2254.030, 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 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 contract with Aviation Research Group, U.S.

The address of the consultant is as follows:

Aviation Research Group, U.S.

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. pertaining to aircraft operation and charter services. The initial award for services was based on:

- 1) Demonstrated competence, knowledge and qualification.
- 2) An understanding of U.T. System operations.
- 3) Reasonableness of fees for service.
- 4) Ability to complete the 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 Consulting Services are necessary. The University has a substantial need for the Consulting Services the does not currently have staff with the expertise or experience or the ability to secure the required services with another state entity.

The individual to be contacted with an offer to provide such consulting services or with any questions is:

Jeffery Kauffmann

Assistant Vice Chancellor for Operations and Support Services

The University of Texas System Administration

702 Colorado, 3rd Floor

Austin, Texas 78701

Phone: (512) 499-4710

Email: [jkauffmann@utsystem.edu](mailto:jkauffmann@utsystem.edu)

The proposal submission deadline is 5:00 p.m. Central Standard Time on September 15, 2008.

TRD-200804413

Francie A. Frederick  
General Counsel to the Board of Regents  
The University of Texas System  
Filed: August 15, 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).