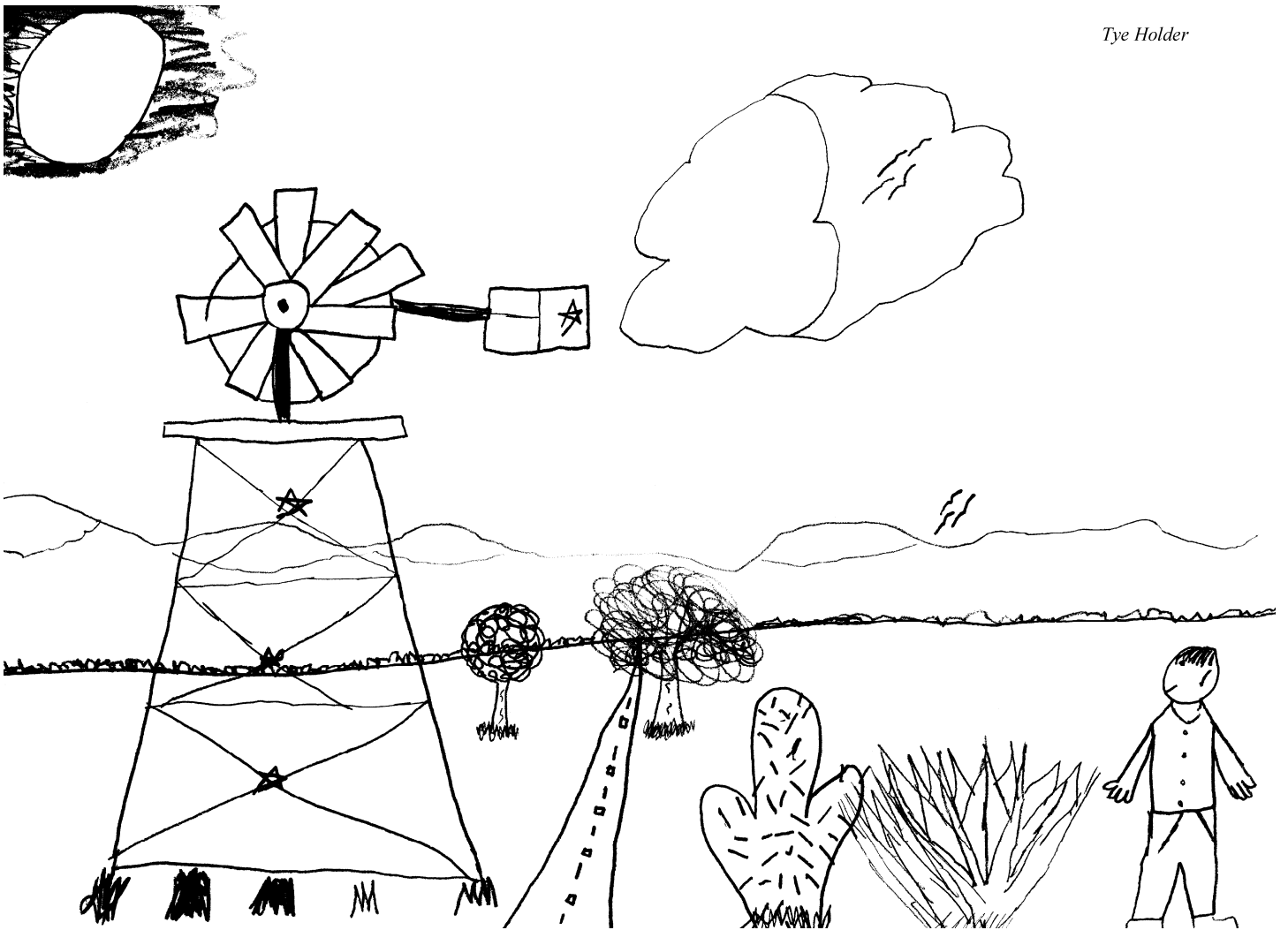

TEXAS REGISTER

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Tye Holder

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

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

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THE GOVERNOR

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

Appointments

Appointments for September 11, 2008

Appointed to the Texas Facilities Commission for a term to expire January 31, 2009, William Derek Darby of Houston (replacing James Duncan of Houston who resigned).

Appointed to the State Office of Risk Management, effective October 15, 2008, for a term to expire February 1, 2013, Ruben W. Hope, Jr. of Montgomery (replacing Martha Rider of Houston whose term expired).

Appointed to the State Office of Risk Management, effective October 15, 2008, for a term to expire February 1, 2013, Lloyd M. Garland of Lubbock (replacing Ronald Beals of Tyler whose term expired).

Appointed to the Texas Judicial Council for a term to expire June 30, 2011, Fred E. Davis of Austin (replacing Ann Manning of Lubbock whose term expired).

Appointments for September 12, 2008

Appointed as Presiding Officer of the Alamo Regional Mobility Authority for a term to expire February 1, 2010, William E. Thornton of San Antonio (Dr. Thornton is being reappointed).

Appointed to the Polygraph Examiners Board for a term to expire June 18, 2013, Trenton Marshall of Mansfield (replacing Elizabeth Bellegarde of El Paso whose term expired).

Appointed to the Polygraph Examiners Board for a term to expire June 18, 2013, Marla Williams of Fairfield (replacing Horatio Ortiz of Corpus Christi whose term expired).

Rick Perry, Governor

TRD-200805046



Proclamation 41-3160

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, which certifies that Hurricane Ike poses a threat of imminent disaster along the Texas Coast and in specified Texas counties.

WHEREFORE, the threat of imminent disaster caused by Hurricane Ike is creating a temporary housing emergency in the State of Texas.

THEREFORE, in accordance with the Emergency Disaster Proclamation and with the authority vested in me by Section 418.020 of the Texas Government Code, I do hereby suspend the collection of all state and local hotel and motel taxes under Chapters 156, 351 and 352 of the Texas Tax Code from the victims of Hurricane Ike for a period of 14 days, beginning September 8, 2008.

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 11th day of September, 2008.

Rick Perry, Governor

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

TRD-200805047



Proclamation 41-3161

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby amend my September 11, 2008, Proclamation, which suspended the collection of all state and local hotel occupancy taxes.

WHEREFORE, I did issue an Emergency Disaster Proclamation on September 8, 2008, which certifies that Hurricane Ike poses a threat of imminent disaster along the Texas Coast and in specified Texas counties.

WHEREFORE, the threat of imminent disaster caused by Hurricane Ike is creating a temporary housing emergency in the State of Texas.

THEREFORE, in accordance with the Emergency Disaster Proclamation and with the authority vested in me by Section 418.020 of the Texas Government Code, I do hereby suspend the collection of all state and local hotel occupancy taxes under Chapters 156, 351 and 352 of the Texas Tax Code, Chapters 334, 335 and 383 of the Local Government Code, as well as any other state law authority that authorizes a local hotel occupancy tax, from the victims of Hurricane Ike, for a period of 14 days, beginning September 8, 2008, and ending September 21, 2008.

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 12th day of September, 2008.

Rick Perry, Governor

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

TRD-200805048



Proclamation 41-3162

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my September 7, 2008, proclamation to include Burleson, Coryell, Freestone, Grimes, Houston, Madison, Milam, Leon, Robertson, Rusk and Washington Counties, certifying that these counties are under imminent threat of disaster as a result of Hurricane Ike.

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 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 state of disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 12th day of September, 2008.

Rick Perry, Governor

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

TRD-200805056



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-0738-GA

Requestor:

The Honorable Kevin Bailey

Chair, Committee on Urban Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of a sheriff to accept a fee from a private organization that contracts with the sheriff's county to operate the county jail (RQ-0738-GA)

Briefs requested by October 13, 2008

RQ-0739-GA

Requestor:

The Honorable Armando R. Villalobos

Cameron County (District) Attorney

Cameron County Courthouse

Post Office Box 2299

Brownsville, Texas 78522-2299

Re: Whether court interpreters appointed pursuant to article 38.30, Code of Criminal Procedure are responsible for transcribing and/or translating foreign language video, audio, and written recordings of testimony in preparation for a criminal proceeding (RQ-0739-GA)

Briefs requested by October 13, 2008

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

TRD-200805054

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 16, 2008



Opinions

Opinion No. GA-0662

The Honorable Tony Goolsby

Chair, Committee on House Administration

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of Local Government Code section 143.014(c) to municipalities that have adopted Local Government Code chapter 174, the Fire and Police Employees Relations Act (RQ-0678-GA)

S U M M A R Y

Section 143.014 of the Local Government Code, a provision of the Fire Fighter and Police Officer Civil Service Act, authorizes a municipal governing body to allow a fire chief to appoint a limited number of persons to the classification immediately below him without following the usual civil service appointment process. When a municipality that is subject to the civil service act adopts Local Government Code chapter 174, the Fire and Police Employees Relations Act, subsection 143.014(c), limiting the number of deputies who may be appointed, becomes inapplicable to the municipality. These limits may be reimposed if the municipality specifically adopts them through the collective bargaining process.

For purposes of subsection 143.014(c), the Fire and Police Employees Relations Act is adopted by an election held pursuant to section 174.051 of the Local Government Code. The limits in subsection 143.014(c) on the number of deputies who may be appointed become inapplicable in the municipality at this time.

Opinion No. GA-0663

The Honorable Jana A. Jones

271st Judicial District Attorney

Jack and Wise Counties

101 North Trinity, Suite 200

Decatur, Texas 76234

Re: Whether the members of a discretionary bail bond board may dissolve the board (RQ-0687-GA)

S U M M A R Y

Occupations Code chapter 1704 creates a bail bond board in a county with a population of 110,000 or more and authorizes the creation of a bail bond board in a county with a population of fewer than 110,000. Because neither chapter 1704 nor another law authorizes it, a bail bond

board created in a county with a population of fewer than 110,000 may not dissolve itself by a vote of the members of the board or by another method.

Opinion No. GA-0664

The Honorable James L. Keffer
Chair, Committee on Ways and Means
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a county may grant funds to a school district or charter school (RQ-0689-GA)

S U M M A R Y

Article III, section 52(a) of the Texas Constitution does not permit a county to gratuitously grant county funds to an independent school dis-

trict or open-enrollment charter school. A county may make a payment to such a school district or charter school only to accomplish a county purpose. A court would likely determine that a county does not have the authority to grant county funds for general purposes of an independent school district or open-enrollment charter school.

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

TRD-200805055
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 16, 2008



EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.17, §15.18

The General Land Office adopts, on an emergency basis, new §15.17, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures, and new §15.18, concerning Emergency Measures for Dune Restoration and existing Shoreline Protection Projects. As a result of Hurricane Ike's anticipated landfall near the boundary of Galveston County and Brazoria County late Friday on September 12, 2008, or early Saturday on September 13, 2008, the General Land Office recognizes that all jurisdictions within Nueces, Matagorda, Brazoria, and Galveston Counties with Dune Protection and Beach Access Plans are expected to have areas where residential structures and public infrastructure are in need of emergency stabilization and repair and where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges in order to prevent imminent peril to the public health, safety, and welfare.

The sections are adopted on an emergency basis due to the imminent peril to public health, safety and welfare represented by the damage to structures and protective barriers caused by high winds, storm surge, high tides and erosion expected from Hurricane Ike. A severe weather advisory issued by the National Weather Service at 7:00 AM on September 12, 2008, indicates that Ike has maximum sustained winds near 105 miles per hour, classified as a category two hurricane on the Saffir-Simpson Scale. Ike is forecast by the National Weather Service to become a major hurricane prior to reaching the Texas coastline. Ike is a very large tropical cyclone with hurricane force winds extending outward to 115 miles from the center and tropical storm force winds extending outward up to 275 miles. The National Weather Service advisory states that coastal storm surge flooding of up to 20 feet above normal tide levels, along with dangerous and battering waves can be expected near and to the east of where the center of Ike makes landfall. Coastal storm surge flooding of 6 to 8 feet above normal tide levels can be expected within the tropical storm warning area along the northern Gulf Coast. Rick Perry, Governor of Texas, issued a proclamation on September 8, 2008, certifying that Hurricane Ike poses a threat of imminent disaster along the Texas Coast for 88 coastal counties, including the counties covered by these emergency rules.

As a result of Hurricane Ike's anticipated landfall near the boundary of Galveston County and Brazoria County late Friday on September 12, 2008, or early Saturday on September 13, 2008, hurricane and tropical storm winds, storm surge, extreme tides and dangerous and battering wave action major property damage, coastal flooding and erosion is expected. It is anticipated that the local jurisdictions will experience loss in elevation of beach sand, and the structural integrity of many houses will be adversely impacted as a result of these natural forces. The protective barrier provided by naturally occurring beaches and dunes in these areas, as well as existing shoreline protection projects will be severely impacted. Coastal residents, public beaches, public and private coastal property, and coastal natural resources are extremely vulnerable to injury, damage, and destruction from subsequent tropical storms and high tide events, as the peak of hurricane season continues.

The General Land Office staff recognized the need for emergency rules as Hurricane Ike approaches the Upper Texas coast. The General Land Office has determined the necessity for emergency rules that allow emergency stabilization and repair of structures and provide for temporary suspension of the permit and certificate application requirements for these emergency stabilization and repair techniques and methods, as well as other hazard mitigation measures.

Emergency rule §15.17 provides procedures and requirements for issuance of authorization to undertake emergency stabilization and repairs of structures impacted by Hurricane Ike. The emergency rules are applicable only to all local jurisdictions with local dune protection and beach access plans within the Counties of Nueces, Matagorda, Brazoria, and Galveston. The section shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare. Section 15.17(c) provides definitions applicable to this section. Section 15.17(d) allows the local government to issue authorizations for emergency stabilization and repair of residential structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.17(e) provides that the normal permit process shall not apply to emergency authorizations, and that emergency authorizations are valid for no more than 180 days from issuance. Section 15.17(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency stabilization and repair actions and the specific activities that have been authorized. Section 15.17(g) provides requirements and limitations with regard to emergency authorizations by the local government of emergency stabilization and repair. Section 15.17(h) provides additional limitations with regard to structures located on the public beach, and requirements related to the placement of beach quality sand. Section 15.17(i), (j), (k) and (l) provide additional limitations and re-

quirements related to the repair of hard structures and septic and sewage systems, the placement of materials on the public beach, and the removal of beach debris.

Under emergency rule §15.17(g), a local government may permit the repair of a structure that appears to be partially or wholly seaward of the line of vegetation; however, a local government is prohibited from authorizing the following: repairing or constructing a slab of concrete, fibercrete, or other impervious material; placing material other than beach quality sand on the public beach; repairing or constructing an enclosed space, including a space with breakaway walls, below the base flood elevation, as identified on the pertinent community's flood insurance rate map, and seaward of the line of vegetation; increasing the footprint of the structure; repairing a structure previously built, repaired, or renovated in violation of the Land Office's beach/dune rules or the local government's dune protection and beach access plan or without an approved certificate or permit; or constructing, repairing, or maintaining an erosion response structure. These limitations on a local government's authority to issue a beachfront construction certificate or dune protection permit for repair of a structure that crosses the line of vegetation or on state-owned submerged lands are existing law and are necessary to ensure compliance with the provisions of §15.4, relating to Dune Protection Standards, §15.5, relating to Beachfront Construction Standards, and §15.6, relating to Concurrent Dune Protection and Beachfront Construction Standards. In areas located landward of the public beach, a slab or other paving beneath the footprint of a structure may be replaced by wooden decking, brick pavers, or other pervious materials; however, the emergency rule does not require that an owner remove an existing slab or other impervious surface when no repairs to the slab or other impervious surface is needed. A local government may authorize the repair of a septic system landward of the line of vegetation if the system complies with the rules of the TCEQ and the local government governing on-site sewage facilities.

Emergency rule §15.18 provides procedures and requirements for issuance of authorization to undertake emergency measures for dune restoration or repairs to existing shoreline protection projects for littoral property impacted by Hurricane Ike. The emergency rules are applicable only to local jurisdictions with local dune protection and beach access plans within the Counties of Nueces, Matagorda, Brazoria, and Galveston. The section shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare. Section 15.18(c) provides definitions applicable to this section. Section 15.18(d) allows the local government with beach/dune permitting jurisdiction to issue authorizations for emergency measures for dune restoration or for repairs to existing shoreline protection projects as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.18(e) provides that the normal permit process shall not apply to authorizations, and that emergency authorizations are only valid for a period no longer than 180 days. Section 15.18(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency dune restoration projects and shoreline protection project repairs. Section 15.18(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.18(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.18(i) contains limitations

on repairs to shoreline protection projects to ensure that such projects are consistent with policies of the Coastal Coordination Council established for structural shoreline protection projects. Section 15.18(j) contains prohibitions with regard to dune restoration projects and shoreline protection project repairs. Section 15.18(k) prohibits a local government from authorizing construction or repair of a bulkhead or new shoreline protection project seaward of the line of vegetation on the public beach easement.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this emergency rule because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code §§63.121, 61.011, and 61.015(b), which provide the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas's public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new sections are also adopted pursuant to the Texas Natural Resources Code §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

§15.17. Emergency Provisions for Stabilization and Repair of Damaged Residential Structures.

(a) Purpose. The purpose of this section is to allow a local government to grant to a property owner the ability to undertake emergency stabilization and repair of a residential structure damaged as the result of Hurricane Ike.

(b) Applicability. This section applies only to structures located in all local jurisdictions with local dune protection and beach access plans within the Counties of Nueces, Matagorda, Brazoria, and Galveston. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

(1) The Code--The Texas Natural Resources Code.

(2) Habitable--The condition of the premises which permits the inhabitants to live free of serious threats to health and safety.

(3) House--A single or multi-family structure that serves as living quarters for one or more persons or families.

(4) Emergency repair--Those immediate response actions that must be undertaken to render a structure habitable or to prevent further damage.

(5) Emergency stabilization--Those immediate response actions that must be undertaken to stabilize a residential structure that is subject to imminent collapse or substantial damage as a result

of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(d) Local government authorization. The local governments with jurisdiction to issue dune protection permits and beachfront construction certificates may, in accordance with this section, authorize emergency stabilization and repair of a residential structure damaged by Hurricane Ike. All authorizations issued under this section must otherwise be in accordance with applicable state and local law. The local government is responsible for assessing damage to such structures, determining whether the structures are eligible for approval of emergency stabilization and repair, and determining appropriate emergency stabilization and repair procedures. Under this section, the local government may only authorize emergency stabilization and repair as necessary to eliminate the danger and threat to public health, safety, and welfare. Any proposed stabilization and repair method or technique must comply with the standards provided in this section and §15.6(e) and (f) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) or §15.11 of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach). If a house appears to be seaward of the line of vegetation solely because of Hurricane Ike and the local government provides a written statement to that effect with the written record described in subsection (f) of this section, the local government may authorize stabilization and repair methods and techniques in accordance with §15.11 of this title for such house.

(e) Procedure. The permit and certificate application requirements of §15.3(s)(4) of this title (relating to Administration) are not applicable to the emergency stabilization and repair of residential structures under this rule. However, all property owners eligible to undertake emergency stabilization efforts and repair must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency stabilization and repair of residential structures will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid for no more than 180 days from the date of issuance. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing emergency stabilization and repair of residential structures shall compile and maintain a written record of the names and addresses of the property owners that receive such authorization and the specific activities authorized. The local governments must make such records available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized Repairs. The local government may authorize emergency stabilization and repair of a residential structure only if the local government determines that the proposed action:

- (1) is solely to make the house habitable or prevent further damage, including reconnecting the house to utilities;
- (2) does not increase the footprint of the house;
- (3) does not include the use of impervious or pervious materials, with the exception of beach quality sand seaward of the natural line of vegetation;
- (4) does not include the construction of an enclosed space below the base flood elevation seaward of the natural line of vegetation;
- (5) does not include the repair, construction, or maintenance of an erosion response structure;

(6) does not occur on state-owned submerged lands;

(7) does not include construction underneath, outside or around the house other than for reasonable access to the house; and

(8) does not include activities inconsistent with the Beach/Dune Rules or local dune protection and beach access plan.

(h) Repair of structures on the public beach.

(1) A local government may grant authorization in accordance with this section for emergency stabilization of a structure that encroaches or may encroach on the public beach, but only to the limited extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may grant authorization in accordance with this section for emergency repair of a residential structure that encroaches or may encroach on the public beach, but only if the structure is:

(A) a house;

(B) not in imminent danger of collapse or other imminent threat to public health and safety;

(C) is not subject to a pending enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), or the Dune Protection Act (Texas Natural Resources Code, Chapter 63). An enforcement action includes the filing of a suit in district court or the referral of a matter for enforcement to the attorney general or other public prosecutor;

(D) is less than 50% damaged.

(3) Beach-quality sand may be placed on the lot in the area five feet seaward of a structure where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags. Such actions are authorized in situations where protection of the land immediately seaward of a structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion. Beach quality sand must not be placed seaward of mean high tide.

(i) The local government is not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads or hard protective structures. However, repairs to existing shoreline protection projects are permitted only as provided in §15.18 of this title (relating to Emergency Measures for Dune Restoration and Existing Shoreline Protection Projects).

(j) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of Health, or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(k) Prohibitions. This emergency rule does not authorize the placement of materials on the public beach except in conjunction with authorized emergency stabilization and repair of residential structures.

(l) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. The local government, therefore, shall coordinate with property owners to remove debris

including but not limited to pilings, concrete, fibercrete, pavers, and garbage from the public beach as soon as possible.

§15.18. Emergency Measures for Dune Restoration and Existing Shoreline Protection Projects.

(a) Purpose. The purpose of this section is to allow a local government to grant property owners the ability to immediately undertake emergency repairs to dunes and existing shoreline protection projects that have been damaged by the effects of Hurricane Ike and to construct dune restoration projects to minimize further threat or damage to coastal residents and littoral property.

(b) Applicability. This section applies only to the emergency dune restoration projects and existing shoreline protection projects located in all local jurisdictions with local dune protection and beach access plans within the Counties of Nueces, Matagorda, Brazoria, and Galveston. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

(c) Definitions. The following words, terms, and phrases when used in this section, shall have the following meanings:

(1) Emergency dune restoration--Those immediate response measures that must be undertaken to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents and littoral property.

(2) Shoreline protection project repairs--Those immediate response measures that must be undertaken to restore an existing shoreline protection project to condition that affords protection from subsequent storms or tidal events.

(d) Local government authorization. The local government with jurisdiction to issue dune protection permits and/or beachfront construction certificates may, in accordance with this section, authorize emergency dune restoration projects and shoreline protection project repairs in areas where dunes or existing shoreline protection projects have been damaged by the effects of Hurricane Ike. All authorizations issued under this section must otherwise be in accordance with applicable state and local laws. Under this section, the local government may only authorize emergency dune restoration projects and shoreline protection project repairs as necessary to minimize the danger and threat to coastal residents and littoral property. Any proposed emergency dune restoration project or shoreline protection project repairs must comply with the standards provided in this section.

(e) Procedures. The permit and certificate application requirements and procedures of §15.3(s)(4) of this title (relating to Administration) are not applicable to emergency dune restoration projects and shoreline protection project repairs. However, any person eligible to undertake an emergency dune restoration project or shoreline protection project repairs must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency dune restoration project or shoreline protection project repairs under this section will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months, after which it will expire. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing an emergency dune restoration project or shoreline protection project repairs shall compile and maintain a written record of the names and addresses of the property owners that receive such authorization and the specific activities authorized. For each authorization, the persons requesting emergency authorizations must provide the local

governments with pictures of the emergency dune restoration project or shoreline protection project conditions before and after completion of the authorized activities. The local governments must make such records available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized emergency dune restoration. The local government shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the post-storm landward boundary of the public beach easement, referred to herein as the restoration area. The local government shall ensure that the restoration area follows the natural meander or migration of the post-storm vegetation line. The local government may issue permits and certificates to allow the restoration of dunes on the public beach only under the following conditions:

(1) Restored dunes may be located farther seaward than the restoration area only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such dunes shall not substantially restrict or interfere with the public use of the beach at normal high tide;

(2) The local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would effectively prohibit access to or use of the public beach at normal high tide; and

(3) Under no circumstances may sand or other materials be placed below mean high water.

(h) Authorized methods and materials for emergency dune restoration. The local government may allow persons to use the following methods or materials for emergency dune restoration:

(1) piles of sand having similar grain size and mineralogy as the surrounding beach;

(2) clay cored dunes landward of the line of vegetation;

(3) organic brushy material such as used Christmas trees; and

(4) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any effect on the public beach, including, but not limited to, increase erosion of the public beach.

(i) Shoreline protection project repairs. Notwithstanding the general prohibition on maintaining or repairing erosion response structures in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards), a local government may authorize repairs to an existing shoreline protection project, subject to the following limitations:

(1) Repairs to existing shoreline protection projects may be permitted to minimize further damage to coastal residences and littoral property, provided the existing shoreline protection project does not substantially restrict or interfere with the public use and access of the beach at normal high tide;

(2) The local government shall not authorize any person to repair a shoreline protection project that is located below mean high water; and

(3) The existing shoreline protection project must conform with the policies of the Coastal Coordination Council promulgated in §501.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(j) Prohibitions. The local government shall not allow any person to undertake dune restoration projects or temporary shoreline protection projects using any of the following methods or materials:

(1) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

(2) fine, clayey, or silty sediments; except as provided for clay cored dunes landward of the line of vegetation;

(3) sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or

(4) sand obtained by scraping or grading dunes, or from beaches in eroding areas.

(k) The local government is not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads or construct new shoreline protection projects. This rule does not prohibit

a local government from authorizing the removal of portions of damaged bulkheads or shore protection projects that threaten public health safety and welfare.

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

Filed with the Office of the Secretary of State on September 12, 2008.

TRD-200804961

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Effective Date: September 12, 2008

Expiration Date: January 9, 2009

For further information, please call: (512) 475-1859

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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 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 304. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §304.2

The Texas Residential Construction Commission ("commission") proposes amendments to 10 TAC §304.2, General Provisions Applicable to all Residential Construction for New Homes, Material Improvements and Interior Renovations, to revise the time for a homeowner to provide notice of an alleged defect so that it complies with changes in the time for filing an inspection request made by House Bill 1038 (Act effective Sept. 1, 2007, 80th Legislature, Regular Session).

Susan Durso, General Counsel, has determined that for each year of the first five-year period that the amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect the public will benefit from having the correct information in the rules governing the minimum statutory warranties.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no significant effect on individuals or large, small, and micro-businesses as a result of the proposed amendments

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no adverse economic effect on small businesses. Therefore, no regulatory flexibility analysis is necessary.

Interested persons may submit written comments (12 copies) on the proposed section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78701-3509. The deadline for submission of comments is 30 days from the date of publication of the proposed amendments in the *Texas Register*. Comments received after that date will not be considered. Comments should be arranged in the manner consistent with the organization of the amendments. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "304.2" in the subject line. Comments submitted electronically that are sent to a different address or that do not have "304.2" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of the Act, and §430.001, which requires the commission to adopt building and performance standards for residential construction.

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

§304.2. General Provisions Applicable to all Residential Construction for New Homes, Material Improvements and Interior Renovations.

(a) Builder Responsibilities for Compliance with Performance Standards and Repair Obligations.

(1) Builder's Work. The builder is responsible for all work performed under the direction of the builder for the period of the applicable warranty. The builder is only responsible for construction defects about which the builder receives notice on or before the second anniversary of the date of discovery of the alleged construction defect but in no event later than ninety ~~[thirty]~~ days following the expiration of the applicable warranty period stated in §304.3(a) of this subchapter, and not later than the thirtieth day after the tenth anniversary of:

(A) the date of the initial transfer of title from the builder to the initial owner of the affected home or improvement; or

(B) if the transaction that is the subject of the dispute did not involve a title transfer, the date that the construction was substantially complete unless otherwise expressly stated herein.

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

(5) Manufactured Products. The builder shall install all manufactured products in accordance with the manufacturer's instructions and specifications.

(A) (No change.)

(B) The homeowner shall notify the builder of a known construction defect not later than the second anniversary of the date of discovery of the construction defect or not later than ninety ~~[thirty]~~ days following the applicable warranty period provided in §304.3(a) of this subchapter and not later than the thirtieth day after the tenth anniversary of:-]

(i) the date of the initial transfer of title from the builder to the initial owner of the affected home or improvement; or

(ii) if the transaction that is the subject of the dispute did not involve a title transfer, the date that the construction was substantially complete unless otherwise expressly stated herein.

(6) (No change.)

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

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

Filed with the Office of the Secretary of State on September 9, 2008.

TRD-200804880

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 463-3926



TITLE 13. CULTURAL RESOURCES

PART 5. TEXAS STATE CEMETERY COMMITTEE

CHAPTER 71. TEXAS STATE CEMETERY

13 TAC §71.11

Introduction and Background.

The Texas State Cemetery Committee (the "Committee") announces its intent to amend 13 TAC §71.11, concerning regulation of monuments in the Texas State Cemetery. The Committee oversees all operations of the Texas State Cemetery pursuant to Texas Government Code §2165.256(a) (Vernon Supp. 2007). The amended rule is proposed under the rulemaking authority granted to the Committee in Texas Government Code §2165.256(i) (Vernon Supp. 2007) (monuments) and §2165.2561(m) (administration of the Texas State Cemetery).

Section by Section Summary.

The proposed new language in §71.11(c)(4) establishes a timeframe within which permanent markers must be placed at gravesites on the grounds of the Texas State Cemetery. The proposed amendment also addresses placement of permanent markers for gravesites presently unmarked.

Fiscal Note.

Mr. Scott Sayers, Chairman of the Committee, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Public Benefit/Cost Note.

Mr. Sayers has also determined that for each year of the first five-year period the proposed rule is in effect, the public will benefit from further clarification regarding the requirement that gravesites be permanently marked.

Mr. Sayers has also determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the adoption of the proposed rule.

Mr. Sayers has also determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2007).

Request for Comments.

Written comments on the proposed rule may be submitted to Rules Coordinator, Legal Services Division, Texas

Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to rulescomments@tfc.state.tx.us. For comments submitted electronically, please include "Monuments" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal to the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning this proposed amendment may be directed to Ms. Susan Maldonado, Legal Counsel for the Committee, at (512) 463-3960.

Statutory Authority.

The amendment is proposed under the Texas Government Code, §2165.256(i), which requires the Committee to adopt rules regulating the monuments erected on the grounds of the Texas State Cemetery, and §2165.2561(m), which gives the Committee the discretion to adopt necessary rules related to the administration of the Texas State Cemetery.

Cross Reference to Statute.

The proposed rule affects §2165.256 and §2165.2561 of the Texas Government Code.

§71.11. Monuments.

(a) Monuments are subject to the approval and regulation of the Committee.

(b) All monument designs shall be submitted to the Cemetery Superintendent for review and compliance with the requirements set forth by the Committee. All monument design submissions shall contain the information on the application form available at the Cemetery office. Incomplete submissions will be returned.

(c) The Committee specifically reserves the right to reject any monument design, if, in the opinion of the Committee, the quality or craftsmanship of the monument design is not suitable, blocks the view of surrounding monuments or does not comply with the following:

(1) Only selected natural stone from established quarries, or bronze meeting the specifications of the United States Bureau of Standards should be used for monuments. In all cases, craftsmanship should be of superior quality.

(2) Curbs, fences, borders, plantings or enclosures around any burial spaces must be approved by the Committee.

(3) Monuments and inscriptions on any monument shall be accurate and in keeping with the respect and dignity for the interred and for the Cemetery as a place of honor and to memorialize noteworthy Texans.

(4) Temporary markers of wood^[5] or concrete are prohibited. Temporary metal markers provided by funeral homes are permitted until replaced by a permanent monument. Permanent monuments, including gravesite markers, must be placed at future burial sites no later than two (2) years following the date of interment or, in the case of an existing burial site, no later than one (1) year following the effective date of this rule. Permanent gravesite markers are solely the responsibility of the decedent's estate or family. Appeals for a time extension may be considered by the Commission. In the event a permanent marker is not established in accordance with this rule, the Committee will place a permanent marker at the gravesite pursuant to Section 2165.256(c) of the Texas Government Code.

(5) Monuments shall be constructed within the following dimensional specifications:

(A) Maximum height: 7 feet;

(B) The footprint of the monument shall not cover more than 20% of the surface of the lot being 7 feet in depth and 6.66 feet (80 inches) in width;

(C) If the width to height ratio of the monument exceeds a 2 to 1 ratio, the Committee will review the design. The design, size, and location of the monument will be considered by the Committee in making a decision.

(D) A flush installed ledger stone shall not exceed 7 feet in depth and 6.66 feet in width.

(6) The Committee may also evaluate any proposal for a new monument to ensure that the proposed design does not detract or otherwise impact the prominence of the Medal of Honor monument.

(d) Aboveground vaults, crypts and mausoleums are prohibited, except for interment in the columbarium.

(e) Monuments are the property of 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 September 12, 2008.

TRD-200804962

Kay Molina

General Counsel

Texas State Cemetery Committee

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 463-4257



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §100.3, concerning Organization and Structure. The amendment clarifies Board policies regarding professional conduct by Board members.

Ms. Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek has also determined that for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be negligible.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examin-

ers, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Texas Occupations Code and 22 TAC Chapters 101 - 125.

§100.3. *Organization and Structure.*

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

(g) Expert Testimony. A member of the board may not serve as an expert witness in a suit involving a health care liability claim against a dentist for injury to or death of a patient [~~unless the member receives approval from the board or an executive committee of the board to serve as an expert witness~~].

(h) Professional Conduct. A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(2) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(3) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(4) A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member should disclose any potential employment as an expert witness to and seek approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.

(5) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

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 September 8, 2008.

TRD-200804872

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 457-0972



PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.7

The Texas Board of Professional Engineers proposes an amendment to §131.7, relating to the Organization of the Board. The proposed amendment is related to the position of Treasurer.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule change adds the position of Treasurer to the list of officers elected by the Board.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the election of officers for the Board and the efficient operation of the agency.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.7. *Organization of the Board.*

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

(d) The board shall elect from its own membership a vice chair, ~~and a~~ secretary, and treasurer. These officers shall serve from September 1 through August 31 and shall be elected annually at a board meeting prior to September 1.

(e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200804966

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §131.11

The Texas Board of Professional Engineers proposes an amendment to §131.11, relating to Board Member Responsibilities and Duties.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule corrects two citations and aligns the rule language with statutory changes to §1001.4527 of the Texas Occupations Code regarding informal settlement negotiations.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of citations in the rules and an improvement in the informal settlement process.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.11. *Board Member Responsibilities and Duties.*

(a) Each board member shall meet and maintain the qualifications for board membership as set by §1001.101 and §1001.102 [~~§§1001.201 and 1001.202~~] of the Act.

(b) Each board member appointed after September 1, 2003 shall attend a board member training prior to attendance and participation in a board or committee meeting.

(c) A board member is subject to the provisions of §1001.106 of the Act relating to grounds for removal.

(d) In order to be reimbursed for travel for other than travel to board and committee meetings, a board member shall have the approval of the chair or full board or executive director.

(e) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

(f) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not ~~participate in the discussion of or~~ vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting and record in the minutes why the member is prohibited from ~~participating in the discussion of or~~ voting on the matter.

(g) Board members shall submit an activity report that shall document the board member's activities related to the board that have occurred since the previous activity report was submitted including activities that occurred in a meeting that was noticed and held in accordance with the open meeting requirements of Chapter 551 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 September 15, 2008.

TRD-200804967

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §131.13

The Texas Board of Professional Engineers proposes an amendment to §131.13, relating to the Vacancies in the Board. The proposed amendment is related to the position of Treasurer.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule change adds the position of Treasurer to the list of officers elected by the Board.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000

small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the election of officers for the Board and the efficient operation of the agency.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.13. Vacancies in the Board.

If for any reason a vacancy shall occur in the board, the chair shall prepare a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in offices of vice chair, ~~or~~ secretary, or treasurer of the board, the board shall elect a new officer to serve for the remainder of the unexpired term from its own membership at the first regular or special meeting following the vacancy.

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 September 15, 2008.

TRD-200804968

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §131.15

The Texas Board of Professional Engineers proposes an amendment to §131.15, relating to the Committees. The proposed amendment is related to advisory committees.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several changes and clarifications were identified. The proposed rule clarifies terminology used for the advisory committees, permits the appointment of Board member liaisons to advisory committees, and establishes a Governmental Advisory Committee.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there is a potential for very minor fiscal

implications for the state and local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there may be minor costs of meetings for the agency, but there is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a the efficient operation of advisory committees to the Board, as well as the creation of a new Governmental Advisory Committee to provide input to the Board on matters related to engineering in the public sector.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.15. *Committees.*

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

(d) Advisory Committees. The chair or board may convene the following committees in an advisory capacity:

(1) Educational Advisory Committee. The educational advisory committee shall consist of the deans of the colleges or the department heads or other program administrator for those institutions without a college of engineering or the representatives for the deans or department heads and other invited representatives of the academic community. The committee shall meet as needed and submit any reports or recommendations to the Licensing Committee. The board chair may appoint one or more board members as liaisons to the advisory committee. If requested by the advisory committee, the executive director or staff may act as the secretary for the meeting.

(2) Industry Advisory Committee. The industry advisory committee shall consist of practicing engineers from various disciplines and functions in engineering including, but not limited to, consulting, manufacturing, regulatory, research, and utility service. The committee shall meet as needed and submit any reports or recommendations to the General Issues Committee. The board chair may appoint one or more board members as liaisons to the advisory committee. If requested by the advisory committee, the executive director or staff may act as the secretary for the meeting.

(3) Governmental Advisory Committee. The governmental advisory committee shall consist of representatives of various governmental agencies, organizations, or jurisdictions that employ professional engineers or use engineering services. The committee shall meet as needed and submit any reports or recommendations to the General Issues Committee. The board chair may appoint one or more board

members as liaisons to the advisory committee. If requested by the advisory committee, the executive director or staff may act as the secretary for the meeting.

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

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200804969

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER B. ORGANIZATION OF THE BOARD STAFF

22 TAC §131.35

The Texas Board of Professional Engineers proposes an amendment to §131.35, relating to the Employee Training. The proposed amendment is related to the educational assistance.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule change clarifies that educational assistance will be calculated for a fiscal year.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of Board policy regarding employee education.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.35. Employee Training.

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

(d) Financial assistance granted under this program shall not exceed \$900 per fiscal year per employee.

(e) - (o) (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 September 15, 2008.

TRD-200804970

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER D. FISCAL MATTERS

22 TAC §131.61

The Texas Board of Professional Engineers proposes an amendment to §131.61, relating to Financial issues. The proposed amendment is related to the Historically Underutilized Business (HUB) Program.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule change clarifies that HUB program is administered under the office of the Comptroller.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the reg-

ulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.61. Financial.

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

(c) Pursuant to the requirements of Chapter 2161.003 of the Government Code, the board adopts the rules of the Comptroller of Public Accounts [~~Texas Building and Procurement Commission (formerly the General Services Commission)~~] relating to the Historically Underutilized Business (HUB) Program and stated at Title 34 [~~4~~] Texas Administrative Code, Part 1 [~~V~~], Chapter 20 [~~444~~], Subchapter B[~~5~~ §§~~111.11 - 111.16~~].

(d) (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 September 15, 2008.

TRD-200804971

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §131.63

The Texas Board of Professional Engineers proposes an amendment to §131.63, relating to the Self-Directed Semi-Independent Agency Project Act.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule is a correction of capitalization.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.63. Self-Directed Semi-Independent Agency Project Act.

The board [~~Board~~] shall adopt, monitor, and update policies as required to comply with the Self-Directed Semi-Independent Agency Project Act (Texas Civil Statutes, Title 132, Article 8930).

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 September 15, 2008.

TRD-200804972

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER E. COOPERATIVE AFFILIATIONS

22 TAC §131.73

The Texas Board of Professional Engineers proposes an amendment to §131.73, relating to Memoranda of Understanding (MOU).

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule is a clarification of organizations with which the agency may enter an MOU.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35

South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.73. Memoranda of Understanding.

The board may enter into a memorandum of understanding with any [each] state agency, [or] governmental entity, or other organization [entities that licenses professions related to engineering to coordinate the jurisdictional requirements that may be in conflict or mirrored by that entity].

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 September 15, 2008.

TRD-200804973

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER F. ADMINISTRATION

22 TAC §131.83

The Texas Board of Professional Engineers proposes an amendment to §131.83, relating to Requests for Information.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule allows the executive director to designate a staff member to be the official custodian of board records.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules and improvements in agency efficiency.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.83. Requests for Information.

The executive director shall be the official custodian of all board records and the executive director or their designee shall process and respond to all requests for information in the manner prescribed by Chapter 552, 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 September 15, 2008.

TRD-200804974

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §131.85

The Texas Board of Professional Engineers proposes an amendment to §131.85, relating to Board Rules Procedures.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule corrects a rule citation.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Execu-

Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.85. Board Rules Procedures.

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

(c) Petition Decision by Board. Within 60 days after submission of a petition requesting the adoption of a rule the board either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule making proceedings in accordance with subsection (a) of this section [~~§131.32 of this title (relating to Amendments, Deletions, and Addition of Rules)~~] and by law.

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200804975

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER G. ADVISORY OPINIONS

22 TAC §131.101

The Texas Board of Professional Engineers proposes an amendment to §131.101, relating to Policy Advisory Opinions.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule conforms language to Texas Occupations Code §1001.601. This rule proposal is in conjunction with a change to §131.111.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.101. Subject of an Advisory Opinion.

~~{(a)}~~ On its own initiative or at the request of any interested person, the board ~~[Board]~~ shall prepare a written advisory opinion about:

- (1) an interpretation of the Act; or
- (2) the application of the Act to a person in regard to a specified existing or hypothetical factual situation.

~~{(b)}~~ ~~The Board shall respond to requests for opinions within 180 days unless the Board affirmatively states the Board's reason:—~~

- ~~{(1)}~~ ~~for not responding to the request within 180 days; or~~
- ~~{(2)}~~ ~~for not responding to the request at all.~~

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 September 15, 2008.

TRD-200804976

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §131.111

The Texas Board of Professional Engineers proposes an amendment to §131.111, relating to Time Period.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule conforms language to Texas Occupations Code §1001.601. This rule proposal is in conjunction with a change to §131.101.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed

amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of agency rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§131.111. Time Period.

The board shall respond to requests for an engineering advisory opinion within 180 days after the date the board receives the written request unless the board ~~[or]~~ affirmatively states ~~[state]~~ the board's reason for not responding to the request within 180 days or for not responding to the request at all.

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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Dale Beebe Farrow, P.E.

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CHAPTER 133. LICENSING

SUBCHAPTER A. ENGINEER-IN-TRAINING

22 TAC §133.3

The Texas Board of Professional Engineers proposes an amendment to §133.3, relating to Engineer-in-Training Application and Certification. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change would allow the board to create different formats for licensure forms including on-line applications.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.309, EIT certification requirements.

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

§133.3. Engineer-in-Training Application and Certification.

(a) To become enrolled as an Engineer-in-Training (EIT), an individual must:

(1) submit an EIT application in a format prescribed by the board,

(2) submit an official transcript in accordance with §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications), and

(3) pay the fee as established by the board.

(b) A certificate as an engineer-in-training expires eight years from the date of issuance. Although the certificate has an expiration date, the records of the board will indicate that an individual has passed the Fundamentals of Engineering examination and these records will be maintained in the file indefinitely and will be made available as requested by the individual or another licensing jurisdiction.

(c) The certificate may be renewed upon receipt of an application in a format prescribed by the board and payment of the EIT certification fee established by the board.

(d) Effective January 1, 2002, official transcripts will be kept on file and an EIT may request its use when filing the professional engineer application.

(e) If the applicant for EIT certification does not submit all documents required within one year of the original application date, the application shall expire and the applicant must reapply and pay a new application fee.

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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For further information, please call: (512) 440-7723



SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers proposes an amendment to §133.11, relating to Types of Licenses. The proposed amendment is related to clarification of rules regarding temporary licenses for international applicants.

The proposed rule is clarification of current rule language. It removes language referring to Comity licenses from §133.11 and moves all requirements for applicants for Temporary license to §133.27.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.310 allows for issuance of a Temporary license.

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

§133.11. *Types of Licenses.*

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal License. The board does not recognize any jurisdiction for reciprocity at this time.

~~[(3) Comity License: (Canada and the United Mexican States through NAFTA). Pursuant to §1001.311 of the Act and the NAFTA Mutual Recognition Agreement, the board has reviewed the licensing requirements of Canada and the United Mexican States and has found them to be substantially equivalent to the requirements in Texas. A comity license issued under this paragraph has full status of and shall be issued as a temporary license. The board may waive the application requirements of §133.21 for applicants who:]~~

~~[(A) are citizens of Canada or the United Mexican States;]~~

~~[(B) are currently licensed in good standing with at least one of the jurisdictions of Canada or the United Mexican States;]~~

~~[(C) meet the experience requirements of §133.69(e) of this chapter; and]~~

~~[(D) submit the documentation as required in §133.27(a) of this chapter.]~~

(3) [(4)] Temporary License. A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard license is subject. A temporary license may only be renewed twice. The executive director shall be authorized to convert a standard license to a temporary license.

(4) [(5)] Provisional. The board [Board] does not issue provisional licenses at this time.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.21

The Texas Board of Professional Engineers proposes an amendment to §133.21, relating to Application for Standard License. The proposed amendment is related to clarification of rules regarding applications, including cleanup of rules as well as allowing more components of the National Council of Examiners for Engineers and Surveyors (NCEES) record to be used for applications in Texas.

The proposed rule is clarification of current rule language.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.303 generally describes application requirements.

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

§133.21. Application for Standard License.

(a) To be eligible for licensure as a professional engineer, one must submit a completed application.

(b) All persons must have passed the examination on the fundamentals of engineering or be eligible for a waiver from the examination on the fundamentals of engineering before submitting an application.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited [bachelor of science] degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550 or a computer score of at least 200 and passage of the Test of Spoken English (TSE) with a score of at least 45, or other evidence such as significant academic or work experience in English acceptable to the executive director.

(d) Applicants for a license shall submit:

(1) an application in a format [form as] prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, court documents, or nationalization documents to substantiate other documentation submitted in the application; ~~and [- And;]~~

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board;

(3) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications); ~~[including:]~~

~~[(A) official transcript(s) of qualifying degree(s), and]~~

~~[(B) commercial evaluation(s) of a non-accredited or non-approved degree(s), as applicable;]~~

(4) supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Records);

(5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);

(6) verification of passage of examination(s) from other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations);

(7) verification of a current license, if applicable;

(8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(9) scores of TOEFL and TSE, if applicable;

(10) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board [a statement describing criminal convictions, if any;] together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(11) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, the TOEFL, the TSE, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) At the time the application is filed, an applicant may request in writing that any transcripts, reference statements, evaluations, experience records or other similar documentation previously submitted to the board be included in a current application; however, such documentation may not meet the requirements of the board at the time of the subsequent application and new or updated information may be required.

(f) ~~The NCEES record [National Council of Examiners for Engineering and Surveying certifications] may be accepted as verification of an original transcript, licenses held, [and/or] examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section [Other uses of the certification may be granted by the executive director on a case-by-case basis].~~

(g) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(h) An applicant who is a citizen of another country ~~[and is physically present in this country]~~ shall show sufficient documenta-

tion to the board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.23

The Texas Board of Professional Engineers proposes an amendment to §133.23, relating to Application from Former Texas License Holders. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change would allow the board to create different formats for licensure forms including on-line applications.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.303 generally describes application requirements.

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

§133.23. *Application from Former Texas License Holders.*

(a) (No change.)

(b) A former license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board [~~form~~];

(2) pay the application fee established by the board;

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired; and

(5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record.

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

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.25

The Texas Board of Professional Engineers proposes an amendment to §133.25, relating to Application from Engineering Educators. The proposed amendment is related to clarification of rules regarding this application type, including cleanup of rule wording.

The proposed rule is clarification of current rule language. It will also allow the board to create different formats for licensure forms including on-line applications.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.303 generally describes application requirements.

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

§133.25. Application from Engineering Educators.

(a) Persons who are currently engineering educators instructing engineering courses in a recognized [~~an institution of higher education or a private or independent~~] institution of higher education, as defined in §131.81 of this chapter (relating to Definitions) [~~the Education Code §61.003~~] are permitted to seek licensure utilizing an alternate application.

(b) The minimum educational qualifications are as follows:

(1) Earned doctoral degree in engineering from a college or university that offers an undergraduate or master's degree program in a related branch of engineering that is approved by the EAC/ABET as published in the current version of the ABET Accreditation Yearbook and or the current version of the ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(2) Earned doctoral degree in engineering or another related field of science or mathematics assessed and approved by the board.

(c) An engineering educator, applying under the alternate process, shall submit:

(1) an [~~alternate~~] application in a format prescribed by the board [~~form~~];

(2) a supplementary experience record:

(A) For tenured faculty (or those approved for promotion), submit a dossier including a comprehensive resume or curriculum vitae [~~For the faculty approved for promotion or tenure through the Dean of Engineering office level, submit a dossier (comprehensive resume or curriculum vitae) prepared for tenure and/or promotion consideration, OR, for tenured faculty, current resume~~] containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications) [college/university transcripts];

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board;

(7) Information regarding any criminal history including any judgements, deferred judgements or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(8) [~~7~~] verification of passage of examination(s) from other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable; and

(9) [~~8~~] written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

(d) Once an alternative application from an engineering educator is received, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application.

(e) This section does not prohibit any engineering educator from applying for licensure under the standard application process.

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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Dale Beebe Farrow, P.E.
Executive Director

Texas Board of Professional Engineers

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22 TAC §133.27

The Texas Board of Professional Engineers proposes an amendment to §133.27, previously relating to Application for Comity License, proposed as Application for Temporary License for Engineers Currently Licensed Outside the United States. The proposed amendment is related to consolidation and clarification of rules regarding temporary licenses for international applicants. It will also reflect a recent international agreement with Australia to promote mobility of qualified engineers.

The proposed rule is clarification of current rule language and a codification of recent agreements between the Texas Board

of Professional Engineers and Engineers Australia. It includes language referring to Comity licenses previously in §133.11 and moves all requirements for applicants for Temporary license to §133.27.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.310 allows for issuance of a Temporary license.

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

§133.27. Application for Temporary [Comity] License for Engineers Currently Licensed Outside the United States.

(a) Pursuant to §1001.311 of the Act, a temporary license may be issued under this section for applicants who:

(1) are citizens of Australia, Canada or the United Mexican States;

(2) are currently licensed or registered in good standing with Engineers Australia or at least one of the jurisdictions of Canada or the United Mexican States; and

(3) meet the following experience requirements:

(A) Applicant currently registered in Australia shall have at least seven years of creditable engineering experience, three of which must be practicing as a registered engineer with Engineers Australia, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(B) Applicant currently licensed in Canada or United Mexican States shall:

(i) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(ii) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(b) [(a)] The applicant applying for a temporary [eomity] license from Australia, Canada or the United Mexican States shall submit:

(1) an [submit a NAFTA eomity] application in a format prescribed by the board [form];

(2) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications); [including:]

[(A) official transcript(s) of qualifying degree(s), and]

[(B) commercial evaluation(s) of a non-accredited or non-approved degree(s), as applicable];

(3) A supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Records) or a verified curriculum vitae and continuing professional development record;

(4) reference statements as required under §133.51(a)(3) and §133.53 of this chapter (relating to Reference Providers and Reference Statements); [-]

(5) passing scores of TOEFL and TSE as described in §133.21(c) of this chapter (relating to Application for Standard License);

(6) Information regarding any criminal history including any judgements, deferred judgements or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges [a statement describing criminal convictions, if any, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges];

(7) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges; [-]

(8) submit a completed Texas Engineering Professional Conduct and Ethics examination; [-]

(9) pay the application fee established by the board [Board]; and

(10) [submit] a verification of a license in good standing from one of the jurisdictions listed in subsection (a)(2) of this section [§133.11(3) of this chapter (relating to Types of Licenses)].

(c) [(b)] Once an application under this section is accepted for review, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application. The board [Upon receipt of the application and verification of a license in good standing, the board may issue to the applicant a temporary license as described under §133.11 of this chapter, unless the application requires further review under §133.83 of this chapter (relating to Staff Review, Evaluation and Processing of Applications) or §133.85 of this chapter (relating Board Review of and Action on Applications). For those applications requiring further Board review, the Board] may request additional information to clarify an application, as needed. Pursuant to §1001.453 of the Act, the board [Board] may review the license holders status and take

action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER D. EDUCATION

22 TAC §133.31

The Texas Board of Professional Engineers proposes an amendment to §133.31, relating to Educational Requirements for Applicants. The proposed amendment is related to clarification of rules regarding applicant qualifications, including cleanup of rule wording.

The proposed amendment will make rule language more consistent with current practices regarding education credentials. It will also codify a board decision regarding qualifications of graduates of the biological systems engineering program at Texas A&M.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.302 describes license eligibility requirements.

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

§133.31. Educational Requirements for Applicants.

(a) Applicants for a license shall have graduated from at least one of the following degree programs or degree program combinations listed in this section:

(1) Approved engineering curriculums under §1001.302(a)(1)(A) of the Act. The following degrees are acceptable to the board for meeting the educational requirements of §1001.302(a)(1)(A) of the Act:

(A) a degree from an engineering program accredited or otherwise approved by [the]:

(i) EAC/ABET; [as published in the current version of the ABET Accreditation Yearbook and the current version of the ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or]

(ii) Consejo de Acreditacion de la Enseñanza de la Ingeniería, Mexico (Council of Accreditation for Engineering Education, C.A.); or [-]

(iii) The Washington Accord.

(B) A [bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences, plus a] graduate degree in engineering, provided that:

(i) the graduate degree is obtained from a college having an engineering program approved by one of the organizations listed in subparagraph (A) of this paragraph where either the graduate or undergraduate degree in the same discipline is accredited; and

(ii) the combination of the degrees is acceptable to the board [Board] as equivalent in EAC/ABET approved curricula content, and the combination of degrees contain sufficient design curricula to provide minimal competency in the use of engineering algorithms and procedures.

(C) a completed degree that has not been accredited or approved by either of the organizations identified in subparagraph (A) of this paragraph [section] but has been evaluated in accordance with §133.33 of this chapter, (relating to Proof of Educational Qualifications-Non-Accredited/Non-Approved Programs), and determined to meet the ABET general and program criteria requirements for an EAC/ABET-accredited or -approved program.

(2) Other programs under §1001.302(a)(1)(B) of the Act. The following degrees are acceptable to the board for meeting the educational requirements of §1001.302(a)(1)(B) of the Act:

(A) a bachelor degree from an engineering technology program that is accredited by the TAC/ABET [as published in the current version of the ABET Accreditation Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated];

(B) A bachelors or graduate degree in engineering, engineering technology, mathematical, physical, or related science that has not been accredited or approved by any of the organizations identified in paragraphs (1)(A) or (2)(A) of this subsection but has been obtained from a recognized institution of higher education as defined in Chapter 131 of this title. Such degree programs must include, as a minimum, the courses listed in clauses (i) and (ii) of this subparagraph or these courses must be taken in addition to the bachelor or graduate degree program:

(i) eight semester hours (12 quarter hours) of mathematics beyond trigonometry, including differential and integral calculus; and

(ii) 20 semester hours (30 quarter hours) of related engineering sciences including subjects such as mechanics, thermodynamics, electrical and electronic circuits, and others selected from material sciences, transport phenomena, computer science and comparable subjects depending on the discipline or branch of engineering. Course work should incorporate hands-on laboratory work as described in the EAC/ABET criteria, and shall contain a sufficient design program to provide minimal competency in the use of engineering algorithms and procedures.

(3) Degree [Other degree] programs submitted to the board by the conferring institutions and determined by the board as meeting or exceeding the criteria of either of the accrediting organizations referred to in this section.

(A) The following programs have been reviewed by the board and determined to be eligible for licensure under §1001.302(a)(1)(A) of the Act: [programs at]

(i) The engineering programs at the University of Texas at Tyler [have been reviewed by the board and determined to be eligible for licensure under §1001.302(a)(1)(A) of the Act, effective] for those who graduated in 1999.

(ii) Biosystems engineering program at the University of Texas A&M at College Station for those who graduated between 1999 and 2003.

(B) The following programs have been reviewed by the board and determined to be eligible for licensure under §1001.302(a)(1)(B) of the Act and eligible for taking the examination on the fundamentals of engineering, effective the date listed:

(i) Tarleton State University, Accepted Programs: Hydrology (1992) and Engineering Physics (2001); [;]

(ii) West Texas State A&M, Accepted Program: Mechanical Engineering (2003).

(b) - (d) (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 September 15, 2008.

TRD-200804984

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER E. EXPERIENCE

22 TAC §133.41

The Texas Board of Professional Engineers proposes an amendment to §133.41, relating to Supplementary Experience Record. The proposed amendment is related to clarification of rules regarding applications, including cleanup of rules as well as allowing more components of the National Council of Examiners for

Engineers and Surveyors (NCEES) record to be used for applications in Texas.

The proposed rule is clarification of current rule language.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.303 generally describes application requirements.

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

§133.41. *Supplementary Experience Record.*

Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary documenting all of the applicant's engineering experience used to meet the requirements for licensure. The NCEES record experience information may be accepted as all or part of a supplementary experience record.

(1) The supplementary experience record shall be written by the applicant and shall:

(A) provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work;

(B) clearly describe the engineering work that the applicant personally performed; and

(C) delineate the role of the applicant in any group engineering activity.

(2) The supplementary experience record shall be divided into employment engagements that correspond to those listed in the application and shall be written in sufficient detail to allow a board reviewer to document the minimum amount of experience required and to allow a reference provider to recognize and verify the quality and quantity of the experience claimed.

(3) Experience that is unsupported by references may not be considered. All experience claimed to meet the minimum requirements for licensure shall be verified by one or more currently licensed professional engineer(s) pursuant to §133.51 of this chapter (relating to Reference Providers).

(4) Experience from part-time employment must be accounted for proportionally to a standard 40-hour work week, if it was part-time employment.

(5) [(4)] The supplementary experience record must cover at least the minimum amount of time needed by the applicant for issuance of a license.

(A) Applicants applying under §1001.302(a)(1)(A) of the Act shall provide supplementary experience records for at least four years of engineering experience.

(B) Applicants applying under §1001.302(a)(1)(B) of the Act shall provide supplementary experience records for at least eight years of engineering experience.

(C) Applicants seeking a waiver from the examination on the fundamentals of engineering and/or the examination on the principles and practices of engineering requirements shall provide a supplementary experience record for at least the minimum number of years of experience required for a waiver of examinations under §133.69 of this chapter (relating to Waiver of Examinations).

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.43

The Texas Board of Professional Engineers proposes an amendment to §133.43, relating to Experience Evaluation. The proposed amendment is related to the determination of engineering experience acceptable for licensure.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed minor changes to rule include a clarification of the use of the NCEES Council Record regarding experience, and giving the Board latitude in criteria for considering engineering experience

In addition to the minor language changes, the Board proposes an additional change in response to a petition for rulemaking. The proposal would clarify the requirements for counting experience credit gained prior to receiving a qualifying degree and would limit the claimed experience gained in this manner to a total of two years. If adopted, this provision would go into effect on January 1, 2009. Applications received between the date of adoption of this amendment and the effective date of this pro-

vision would be eligible to have all experience submitted evaluated, regardless if earned pre- or post-graduation. However, all other provisions of the rules regarding engineering experience evaluation will remain in effect and the Board has discretion regarding the quality and relevance of experience claimed.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is to provide sufficient notice to applicants regarding changes to application process, as well as insuring a consistency in the evaluation of licensure applications.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.302, which requires that an applicant meet educational and experience requirements as determined by the Board; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§133.43. Experience Evaluation.

(a) The board shall evaluate the nature and quality of the experience found in the supplementary experience record or the NCEES record experience information and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

(J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; and

(K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001.

(2) In the review of engineering experience, the board may ~~shall~~ consider additional elements unique to the history of the applicant. Such elements may ~~should~~ include ~~at a minimum~~:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

~~[(C) whether the submitted materials indicate good character and reputation;]~~

(C) ~~[(D)]~~ whether the experience was gained in accordance with the provisions of the Act;

(D) ~~[(E)]~~ whether the experience was gained in one dominant branch;

(E) ~~[(F)]~~ whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice; and

(F) ~~[(G)]~~ whether short engagements have had an impact upon professional growth.

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

(A) the experience is gained during an engagement longer than three months in duration;

(B) the experience, when taken as a whole, meets the minimum time;

(C) the experience is not anticipated and has actually been gained at the time of application;

(D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice; and

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed.

(b) Experience credit may be granted for experience gained prior to an applicant's receiving a conferred degree per §133.31 of this chapter (relating to Educational Requirement for Applicants). Effective January 1, 2009, experience [Experience] gained in this manner is limited to a total of two years, and must:

(1) be substantiated in the supplementary experience record and a reference statement provided for the experience;

(2) be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

(3) reflect that, at the time the experience was gained, the applicant had passed junior and/or senior level engineering or related engineering science courses and applied relevant engineering knowledge in the claimed experience.

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

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

Filed with the Office of the Secretary of State on September 15, 2008.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §133.51

The Texas Board of Professional Engineers proposes an amendment to §133.51, relating to Reference Providers. The proposed amendment is related to clarification of rules regarding applications, including cleanup of rules as well as allowing more components of the National Council of Examiners for Engineers and Surveyors (NCEES) record to be used for applications in Texas.

The proposed rule is clarification of current rule language.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.303 generally describes application requirements.

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

§133.51. Reference Providers.

(a) Applicants for licensure shall provide reference statements to verify character suitability for licensure and all engineering experience claimed to meet the minimum years of experience required. Reference statements will be used to verify the applicant's character and the factual presentation of the applicant's experience and to determine to the extent the experience is creditable engineering experience. The NCEES record reference documentation may be accepted as reference statements as specified in this section.

(1) Standard Licensure Procedure. Applicants applying under §1001.302(a)(1)(A) or (B) of the Act, including those applicants licensed in another jurisdiction or previously licensed in Texas, shall provide reference statements from at least three reference providers. These reference providers shall be currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(2) Waiver of Examinations Procedure. Applicants requesting a waiver from the examinations on the fundamentals of engineering or principles and practice of engineering shall provide reference statements from at least five reference providers. These reference providers shall be currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

~~[(3) Reciprocal or Comity Licensure Procedure (Canada and the United Mexican States through NAFTA): Applicants applying under §1001.311 of the Act and the NAFTA Mutual Recognition Agreement shall provide reference statements from at least three reference providers. These reference providers shall be currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all applicable portions of the applicant's supplementary experience record and complete the reference statement in full.]~~

(b) Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference provider; such review shall be noted on the reference statement.

(c) All reference providers shall be individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, reference providers should be individuals who directly supervised the applicants.

(d) Professional engineers who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their pocket card or other verification to indicate that their license is current and valid.

(e) Professional engineers who provide reference statements shall not be compensated.

(f) Reference statements on file with the board from previous applications may be used upon written request of the applicant and with the approval of the executive director. Additional references may be required.

(g) The board members and staff may, at their discretion, rely on any, all, or none of the reference statements provided in connection with an application for licensure.

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.53

The Texas Board of Professional Engineers proposes an amendment to §133.53, relating to Reference Statements. The proposed amendment is related to clarification of rules regarding applications, including cleanup of rules as well as allowing more components of the National Council of Examiners for Engineers and Surveyors (NCEES) record to be used for applications in Texas.

The proposed rule is clarification of current rule language.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.303 generally describes application requirements.

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

§133.53. Reference Statements.

(a) The applicant shall send the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record to each reference provider.

(b) Persons providing reference statements verifying an applicant's engineering experience shall:

(1) complete and sign the reference statement form; and

(2) review, evaluate, and sign all applicable portions of the supplementary experience record(s). The reference provider's signature indicates that he has read the supplementary experience record(s), that the record(s) are correct to the best of his knowledge, and that the experience is relevant to licensure. If the reference provider disagrees with or has comments or clarification to the information provided by the applicant, the reference provider should submit written comments or concerns to the board.

(c) The reference provider shall submit to the board both the reference statement and the supplementary [~~supplemental~~] experience record.

(d) For any reference statement to meet the requirements of the board, the reference statement must be secured. For a reference statement to be considered secure, the reference provider shall:

(1) place the completed reference statement and reviewed supplementary experience records in an envelope;

(2) seal the flap of the envelope;

(3) after sealing the envelope, the reference provider shall sign across the sealing edge of the flap of the envelope and cover the signature with transparent tape; and

(4) the reference provider shall return the sealed envelope to the applicant or transmit the documents directly to the board.

(e) Secured reference envelopes shall be submitted to the board by applicant or reference provider.

(f) Evidence of retaliation by an applicant against a person who provides reference material for an application may be considered in the application process as described in §133.81(d) of this chapter (relating to Receipt and Process).

(g) The NCEES record reference documentation may be accepted as reference statements as specified in this section.

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.63

The Texas Board of Professional Engineers proposes an amendment to §133.63, relating to Texas Engineering Professional Conduct and Ethics Examination. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change would clean up existing rule language as well as allow the board to create different formats for licensure forms including on-line applications.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.304 generally describes examination requirements.

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

§133.63. Texas Engineering Professional Conduct and Ethics Examination.

(a) The Texas Engineering Professional Conduct and Ethics Examination shall be self administered by the applicant ~~open book~~ and shall be prepared and furnished ~~administered~~ by the board. Each applicant must submit this examination in a format prescribed by the

board with the application and must pass with a score of at least 70 percent.

(b) No fees or advanced scheduling forms are required for the Texas Engineering Professional Conduct and Ethics Examination.

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.65

The Texas Board of Professional Engineers proposes an amendment to §133.65, relating to Examination on the Fundamentals of Engineering. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change would clean up existing rule language to make it more consistent with current practices.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.304 generally describes examination requirements.

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

§133.65. *Examination on the Fundamentals of Engineering.*

(a) An undergraduate student who is within two full-time regular semesters (not including summer sessions) of graduating may take the examination on the fundamentals of engineering at a location prescribed by the board provided that the student is enrolled in a degree program in Texas and the program is:

- (1) an engineering program accredited or approved by the EAC/ABET;
- (2) a four year baccalaureate technical program accredited or approved by the TAC/ABET; [ø]
- (3) an engineering-related science program of four years or more that has been approved by the board; or [-]

~~[(b) A graduate student may take the examination on the fundamentals of engineering at a location prescribed by the board provided that the student is enrolled in an EAC/ABET-accredited graduate degree program or in a graduate program at an institution which has an EAC/ABET-accredited undergraduate degree program in that discipline, and the student has:]~~

- ~~[(1) a baccalaureate degree that is EAC/ABET-accredited;]~~
- ~~[(2) an engineering or engineering-related science program degree that has been approved by the board; or]~~
- (4) ~~[(3)]~~ a non-engineering related curriculum or other degree in which the student has provided evidence acceptable to the executive director as meeting the minimum requirements of §1001.302(a)(1)(A) or (B) of the Act.

~~[(b) [(e)] Persons who demonstrate that they meet the educational requirements for a license and who have not passed the examination on the fundamentals of engineering while in college and who are residents of Texas may apply to the board to take the examination in accordance with the applicable examination schedule adopted by the board.~~

~~[(c) [(d)] Persons who do not meet the criteria of subsection (a) of this section, but who need only to complete the examination on the fundamentals of engineering to fulfill the graduation requirements of a degree program that would meet the educational requirements for a license, may apply to the board to take the examinations in accordance with the applicable examination schedule adopted by the board.~~

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200804990

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §133.67

The Texas Board of Professional Engineers proposes an amendment to §133.67, relating to Examination on the Principles and Practice of Engineering. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change would clarify existing rule language.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.304 generally describes examination requirements.

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

§133.67. *Examination on the Principles and Practice of Engineering.*

(a) The examination on the principles and practice of engineering is open only to licensed engineers who wish to take the examination for record purposes and to applicants who have received board approval to take it.

(b) Applicants approved to take the examination on the principles and practice of engineering shall:

- (1) be advised of the first examination date for which they are eligible;
- (2) schedule to test in an area of competency as demonstrated by their experience or [and] education;
- (3) be solely responsible for timely scheduling for the examination and any payment of examination fees; and
- (4) have no more than four consecutive examination opportunities, including the examination given on the date of the first available examination, to pass the examination. Except as provided for in §133.61(i) of this chapter (relating to Engineering Examinations Required for a License to Practice as a Professional Engineer), no extensions shall be granted under any circumstances.

(A) Once an applicant has scheduled for an examination that is offered once per year, the consecutive opportunities shall be counted as one annually as long as the applicant does not schedule to sit for an examination that is offered twice per year.

(B) Once an applicant has scheduled for an examination that is offered twice per year, either for the first time or after sched-

uling for an examination that is offered once per year, the remaining consecutive opportunities shall be counted as two annually from that examination forward until the four consecutive opportunities expire.

(c) Applications for applicants who do not pass the examination within the allotted time specified in subsection (b)(4) of this section shall be denied pursuant to §133.87 of this chapter (relating to Final Action on Applications).

(d) The examination on the principles and practice of engineering shall be offered according to the schedule determined by the NCEES [National Council of Examiners for Engineering and Surveying] or by the board.

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

Filed with the Office of the Secretary of State on September 15, 2008.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.69

The Texas Board of Professional Engineers proposes an amendment to §133.69, relating to Waiver of Examinations. The proposed amendment is related to consolidation and clarification of rules regarding temporary licenses for international applicants.

The proposed rule is clarification of current rule language. It removes language referring to waivers of Principles and Practice Examination for Comity licenses to be consolidated into §133.27 relating to Application for Temporary License for Engineers Currently Licensed Outside the United States.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no adverse fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, there will be no impact on the public.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.310 allows for issuance of a Temporary license; §1001.305 allows the board to waive examination requirements.

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

§133.69. *Waiver of Examinations.*

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

(c) Waiver of Principles and Practice of Engineering Examination. Applications for a waiver of the principles and practice of engineering examination will only be accepted from persons who meet the requirements of this subsection.

(1) Currently Licensed in U.S. State or Territory or Former Texas License Holder: An applicant who is applying for a standard license and is currently licensed and in good standing in any U.S. state or territory, or a former Texas license holder applying under §133.23 of this chapter (relating to Applications from Former Texas License Holders), shall:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;

~~{(2) Currently Licensed in Canada or United Mexican States: An applicant applying for a temporary comity license via NAFTA shall meet the requirements of §133.11(3) of this chapter, and;}~~

~~{(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or}~~

~~{(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;}~~

(2) ~~{(3)}~~ Engineering Educator:

(A) meet the requirements of §133.25(a) and §133.25(b)(1) of this chapter (relating to Applications from Engineering Educators) and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least six years and began teaching engineering prior to September 1, 2001;

(ii) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the requirements of §133.25(a) and §133.25(b)(2) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least eight years and began teaching engineering prior to September 1, 2001;

(ii) at least eight years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least six years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(d) - (f) (No change.)

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.75

The Texas Board of Professional Engineers proposes an amendment to §133.75, relating to Examination Irregularities. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change would clarify existing rule language.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the reg-

ulation of the practice of engineering in this state; Occupations Code §1001.304 generally describes examination requirements.

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

§133.75. Examination Irregularities.

(a) The examinations will be administered in accordance with the NCEES or the board policies and procedures. An examinee who does not abide by the NCEES or the board policies and procedures will be subject to dismissal from the remainder of the examination. Cheating on examinations will not be tolerated. Examination proctors who observe that an examinee is giving assistance to or receiving assistance from another person, compromising the integrity of the examination, or participating in any other form of cheating or violation of exam policies or procedures during an examination may [shall] require the examinee to surrender all examination materials. The examinee involved may be required to [shall] leave the room and may [shall] not be permitted to return. Evidence of cheating found after the examination shall also be a cause for action. The executive director shall be informed of such instances of suspected cheating at the earliest possible opportunity and will determine appropriate action.

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

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

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Dale Beebe Farrow, P.E.

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.81

The Texas Board of Professional Engineers proposes an amendment to §133.81, relating to Receipt and Processing of Applications by the Board (formerly Receipt and Process). The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change clarifies existing rule language and makes it more consistent with current practices.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

§133.81. Receipt and Processing of Applications by the Board [Process].

(a) Upon receipt of an application for licensure at the board [Board] office [in Austin, Texas], the board [Board] shall initiate a review of the credentials submitted. Applicants who meet the licensure requirements shall be issued a license upon successful passage of the examination on the principles and practices of engineering, having met all examination requirements, or been approved by waiver of examination(s) [or having been approved for licensure through comity]. Applicants who fail to meet one or more of the licensure requirements shall be denied a license.

(b) Once an application and fee is received by the board, no refunds will be granted. By submitting an application and fee, the applicant attests that he or she has reviewed the education, experience, reference, and examination requirements for licensure as prescribed in this chapter and that he or she is qualified for a license based on these requirements.

(c) Once an application has been reviewed and [the board has approved an applicant for licensure subject to passage of an examination, and] before a license has been issued or denied, the board will not accept a new or amended application from the applicant [unless the applicant is found to be eligible for licensure under §133.11(3) of this chapter (relating to Types of Licenses) and has not taken and failed the PE Exam. If the applicant is found to be eligible for licensure via reciprocity or comity under §133.11(3) of this chapter an application may be amended to meet the requirements of §133.27 of this chapter (relating to Application for Reciprocal or Comity License)]. This does not prohibit the executive director, a board member, or the board from requesting, when they deem necessary, additional information from an applicant regarding his or her application.

(d) - (f) (No change.)

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.83

The Texas Board of Professional Engineers proposes an amendment to §133.83, relating to Executive Director Review, Evaluation and Processing of Applications (formerly Staff Review, Evaluation and Processing of Applications). The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change clarifies existing rule language and makes it more consistent with current practices.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

§133.83. Executive Director [Staff] Review, Evaluation and Processing of Applications.

All references to the executive director in this section shall allow for the delegation of authority by the executive director to other staff members. An application for licensure shall be handled in the following manner and order:

(1) The application is received at the board office [in Austin, Texas].

(2) The executive director shall review the application for completeness.

(3) The executive director shall:

(A) accept the application as complete for processing and evaluating; or

(B) accept the application and notify the applicant at the earliest possible time of deficient information and give the applicant 45 days to complete the application. Upon receipt of an applicant's written request, the executive director may grant the applicant one additional 30 day period to submit any information identified by the executive director as necessary to complete the application. If the applicant does not submit all documents required in the time allowed for such submittals, the application shall be administratively withdrawn and further processing performed in accordance with §133.89 of this chapter (relating to Processing of Administratively Withdrawn Applications).

(4) Once an application is complete, the executive director shall review and evaluate the qualifications found in the application and determine whether the applicant should interview with the licensing committee or whether the application should be:

(A) approved,

(B) denied, or

(C) reviewed by the professional engineer members of the board in accordance with §133.85 of this chapter (relating to Board Review of and Action on Applications).

(5) The executive director may approve the application without further board review unless the application is accompanied by:

(A) an unfavorable recommendation by one or more reference providers; or

(B) a request for waiver of examination(s), except when[-]

~~[(i) the applicant has successfully passed the examination on the principles and practice of engineering; is solely requesting a waiver of the examination on the fundamentals of engineering; and has not been disciplined or otherwise sanctioned by this board or a board of another state having jurisdiction over the practice of engineering; or]~~

~~[(ii) the applicant is solely requesting waiver of the examination on the fundamentals of engineering [and requesting approval to take the examination on the principles and practice of engineering].~~

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

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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22 TAC §133.85

The Texas Board of Professional Engineers proposes an amendment to §133.85, relating to Board Review of and Action on Ap-

plications. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change clarifies existing rule language and makes it more consistent with current practices.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

§133.85. Board Review of and Action on Applications.

The application shall be circulated randomly among the professional engineer board members if any of the conditions listed in paragraph (5)(A) or (B) of §133.83 of this chapter apply or on request of [if] the executive director [requests that an application be reviewed by the board members] and shall be processed as follows:

(1) The application is approved if the first reviewing board member agrees with an executive director recommendation of approval.

(2) If the executive director or the first reviewing board member determines that the application or a request for waiver of examinations should be denied or requests that the applicant appear before the licensing committee, then circulation shall continue until the application receives at least three votes for either approval or denial of the waiver request(s) or application or a personal interview of the applicant. If, after circulation among all the professional engineer board members, an application does not receive three like votes, the application shall then be referred to the licensing committee for a determination whether the application should be approved or denied or that additional information or a personal appearance of the applicant before the committee is necessary.

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

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.87

The Texas Board of Professional Engineers proposes an amendment to §133.87, relating to Final Action on Applications. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change clarifies existing rule.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

§133.87. *Final Action on Applications.*

(a) Upon approval of an application by the executive director, the licensing committee, or the board in a manner provided in this subchapter, the executive director shall:

(1) issue a license ~~[approve and application]~~ subject to the applicant's taking and passing the examination on the principles and practice of engineering; or

(2) issue a license to an applicant who has passed the examination on the principles and practice of engineering or who has had that examination waived.

(b) - (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 September 15, 2008.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §133.97

The Texas Board of Professional Engineers proposes an amendment to §133.97, relating to Issuance of License. The proposed amendment is related to rule language clean-up identified during the required quadrennial review.

The proposed rule change clarifies existing rule language and makes it more consistent with current practices.

David Howell, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Howell has determined that there is no additional cost to the agency or to licensees. There will be no fiscal impact to individuals required to comply with the rule. There is no adverse fiscal impact to small or micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, no public impact is anticipated.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of Board rules and processes.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.003 generally restricts the practice of engineering to qualified individuals.

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

§133.97. *Issuance of License.*

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

(k) A license holder may request that the board change the primary area of competency or indicate additional areas of competency by providing one or more of the items listed in paragraphs (1) - (3) of this subsection:

(1) a transcript showing an additional degree in the new branch other than the degree used for initial licensure;

(2) a supplementary experience record documenting at least 4 years of experience in the new branch verified by at least one PE reference provider who has documented competence in the engineering discipline being added that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the new branch.

(l) (No change.)

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.1

The Texas Board of Professional Engineers proposes an amendment to §137.1, relating to License Holder Designations.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule aligns the rule language with statute clarifying the option of "Inactive Status" includes the ability to use "retired".

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engi-

neers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.1. *License Holder Designations.*

(a) Pursuant to §1001.301 of the Act, a license holder may use the following terms when representing himself or herself to the public:

- (1) "engineer",
- (2) "professional engineer",
- (3) "licensed engineer",
- (4) "registered engineer",
- (5) "licensed professional engineer",
- (6) "registered professional engineer", or
- (7) any combination of words with or variation of the terms listed in paragraphs (1) - (6) of this subsection.

(b) Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.

(c) License holders who have placed their license in an inactive status pursuant to §137.13 of this chapter (relating to Inactive Status) may use the terms in §137.1(a) of this section but must include the term "inactive" or "retired" in conjunction with the designation.

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 September 15, 2008.

TRD-200804999

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.3

The Texas Board of Professional Engineers proposes an amendment to §137.3, relating to the use of the term "Engineer".

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule aligns the rule language with statute clarifying the grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.3. *Other Use of Term "Engineer".*

A person may not use the name, title, or words that convey to the public that a person is offering to perform engineering services to the public unless licensed under the requirements of the Act. The Act allows for the use or variation of the term "engineer" in a limited manner as summarized in this section.

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

(5) Pursuant to §1001.066(2) of the Act, a person employed by a business entity whose products or services [and service] consist of space vehicles, services or technology required by the National Aeronautical and Space Administration (NASA) may use the terms "engineer" or "engineering" in the person's job title or personnel classification if the person only uses the designation in association with the products and services related to NASA.

(6) Pursuant to §1001.301(f) of the Act, a person who is a regular employee of a business entity that is engaged in engineering activities but exempt from the licensure requirements under [§]§1001.057 or §1001.058 [400.058] of the Act may use the term "engineer" on business cards and forms of correspondence made available to the public providing the person does not:

(A) offer to perform engineering services to the public;

(B) use the designation outside the scope of §1001.057 or §1001.058 to convey the ability or willingness to perform engineer-

ing services or make an engineering judgment requiring a licensed professional engineer.

(7) Pursuant to §1001.406(a)(2) of the Act, a person who has an undergraduate or graduate [graduated] degree from an engineering program accredited by ABET may use the term "graduate engineer" on the person's business cards and in any forms of correspondence or personal communication.

(8) Pursuant to §1001.406(b) of the Act, a person who has an undergraduate or graduate [graduated] degree from an engineering program accredited by ABET and who is employed by a firm registered pursuant to Chapter 135 of this title and under the direct supervision of a licensed professional engineer may use the term "engineer" on the person's business cards and in any forms of correspondence or personal communication.

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 September 15, 2008.

TRD-200805000

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.5

The Texas Board of Professional Engineers proposes an amendment to §137.5, relating to the Notification of Address Change, Employment Change and Criminal Convictions.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule aligns the rule language with statute identifying the board with a lower case 'b'.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.5. *Notification of Address Change, Employment Change, and Criminal Convictions.*

(a) (No change.)

(b) A notice informing the board of a change in employment status shall include, as applicable, the:

(1) full legal trade or business name of the association or employment;[-]

(2) physical location and mailing address of the business;[-]

(3) telephone number of the business office;[-]

(4) type of business (corporation, assumed name, partnership, or self-employment through use of own name);[-]

(5) legal relationship and position of responsibility within the business;[-]

(6) effective date of this change; and

(7) reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.).

(c) Each license holder shall notify the board [Board] in writing not later than 30 days after a misdemeanor or felony criminal conviction.

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 September 15, 2008.

TRD-200805001

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.7

The Texas Board of Professional Engineers proposes an amendment to §137.7, relating to License Expiration and Renewal.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule aligns the rule language with statute identifying the board with a lower case 'b' and clarifying the grammar and punctuation.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed

amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.7. *License Expiration and Renewal.*

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

(d) Pursuant to authority in §1001.205(b) and §1001.206(c) of the Act, the board has established the renewal fee for the following categories of licenses that do [tø] not require the increase in professional fees:

(1) a license holder who is 65 years of age or older;

(2) a license holder who is disabled with a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer excluding an impairment caused by an addiction to the use of alcohol, illegal drugs, or controlled substance;

(3) a license holder who meets the exemption from licensure requirement of §1001.057 or §1001.058 of the Act, but does not claim that exemption;

(4) a license holder who is not practicing engineering and has claimed inactive status with the board in accordance with the requirements of §137.13 of this chapter (relating to Inactive Status).

(e) Licenses will expire according to the following schedule;[-]

(1) Licenses originally approved in the first quarter of a calendar year will expire on December 31.

(2) Licenses originally approved in the second quarter of a calendar year will expire on March 31.

(3) Licenses originally approved in the third quarter of a calendar year will expire on June 30.

(4) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.

(f) A temporary license may only be renewed twice for a total duration of three years, after which the former license holder may apply

for a new temporary or a standard license as provided in the current Act and applicable board [Board] rules.

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 September 15, 2008.

TRD-200805002

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.9

The Texas Board of Professional Engineers proposes an amendment to §137.9, relating to Renewal of an Expired License.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by clarifying the grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.9. *Renewal for Expired License.*

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

(f) Pursuant to Texas Occupations Code §55.002, a license holder is exempt from any increased fee or other penalty imposed in

this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in a timely manner because [øf] the license holder was serving on active duty in the United States armed forces outside Texas.

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805003

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §137.13

The Texas Board of Professional Engineers proposes an amendment to §137.13, relating to Inactive Status.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule aligns the rule language with statute identifying the board with a lowercase 'b'.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.13. *Inactive Status.*

(a) A license holder may request in writing to change the status of the license to "inactive" at any time. A license holder whose license is inactive may not practice engineering. A license holder who has requested inactive status shall not be required to pay the fee increase per §100.206 of the Act and shall not receive any refunds for licensing fees previously paid to the board [~~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 September 15, 2008.

TRD-200805004

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.14

The Texas Board of Professional Engineers proposes an amendment to §137.14, relating to the Voluntary Surrender of a License.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by changing the 'b' in Board to lowercase and clarifying the grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter

2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.14. *Voluntary Surrender of License.*

(a) A license holder who does not wish to maintain a license, the legal guardian of the license holder, or other legal representative of the license holder may voluntarily surrender the license by submitting a request in writing provided that the license holder:

(1) is in good standing, and

(2) does not have an enforcement case pending before the board. [~~Board~~]

(b) (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 September 15, 2008.

TRD-200805005

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.17

The Texas Board of Professional Engineers proposes an amendment to §137.17, relating to the Continuing Education Program.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed rule also adds outreach to K-12 or university students to the list of acceptable activities for continuing education and allows licensees to count up to 3 Professional Development Hours (PDH) for these activities.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an enhancement of the continuing education program.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.17. *Continuing Education Program.*

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

(f) PDH units may be earned as follows:

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

(5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection ~~[above]~~.

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

(8) Patents issued ~~[Issued]~~.

(9) (No change.)

(10) Active participation in educational outreach activities involving K-12 or higher education students.

(g) All activities described in §137.17(f) of this title shall be relevant to the practice of a technical profession and may include educational, technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

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

(5) 1 Hour of professional development through self-directed study--1 PDH (Not to exceed 5 PDH) ~~[--1 PDH]~~

(6) (No change.)

(7) Active participation in professional or technical society, association, agency, or organization --1 PDH (Not to exceed 5 PDH per organization) ~~[--1 PDH]~~

(8) Active participation in educational outreach activities--1 PDH (Not to exceed 3 PDH)

(9) ~~[(8)]~~ Each patent issued--15 PDH

(10) ~~[(9)]~~ Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(i) Determination of Credit

(1) The board ~~[Board]~~ shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The board ~~[Board]~~ shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements.

(3) - (8) (No change.)

(j) - (l) (No change.)

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the board ~~[Board]~~ or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the board ~~[Board]~~ finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of engineering; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) - (o) (No change.)

(p) Noncompliance:

(1) If a ~~[an]~~ license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CEP reporting requirements as listed in this section is a violation of board ~~[Board]~~ rules and shall be subject to sanctions.

(3) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

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 September 15, 2008.

TRD-200805006

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.31

The Texas Board of Professional Engineers proposes an amendment to §137.31, relating to the voluntary Seal Specifications.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by changing the "b" in Board to lowercase.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.31. Seal Specifications.

(a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board [~~Board~~] for board [~~Board~~] records.

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

(d) All seals obtained and used by license holders shall contain any given name or initial combination with the surname as currently listed with the board [~~Board~~] and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination.

(e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805007

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.33

The Texas Board of Professional Engineers proposes an amendment to §137.33, relating to Sealing Procedures. The proposed amendment is related to sealing requirements for licensees.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes.

In addition, the proposed rule change adds a requirement that all licensees include the name and registration number of the registered engineering firm for which they are doing the work, and provides specific exceptions. Upon adoption, it is the intent of the Board to phase-in enforcement actions concerning this rule, and the Board will fully enforce against this rule beginning January 1, 2010. After adoption and until January 1, 2010, individuals who

violate the rule will be notified of the violation and instructed how to comply with the rule. This implementation period will allow time for licensees, registered engineering firms, and the public to become informed and modify sealing procedures to comply with the new rule. During this implementation period, outreach (presentations, examples, etc.) will be provided by the Board.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there may be a minor fiscal impact anticipated for state government and the agency as there may be an increase in investigations and administrative penalties incurred for violations of this rule. Mr. Kinney has determined that there may be a minor fiscal impact to licensees or industry due to revisions in their sealing procedures.

Mr. Kinney has determined there may be a minor fiscal impact, related to potential costs for modifying existing processes and procedures, for the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. In the preparation of this rule, a Regulatory Flexibility Analysis has been performed to include alternatives for licensees and engineering firms. After considering other options, including requiring specific and potentially costly physical seals for engineering firms, mandatory design requirements for indicating engineering firm registration, and a rule with no exemptions regardless of the type of engineering being performed, the Board prepared the current rule language. By not requiring a specific design method to indicate firm name and registration number, the current rule language should only have an impact in terms of employee time required to revise a current design sheet or report. The actual cost is expected to be minimal and difficult to estimate. The cost will vary depending on company procedures and internal costs. Each company will likely need to spend no more than 30-60 minutes to adjust their procedures to comply with this rule. The largest potential impact would be realized by larger engineering firms that may have to propagate design standards through departments and across multiple offices.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is consumers of engineering work will be better able to identify firm providing engineering services and determine relationship between the engineer and the firm.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.401 of the Act, which requires a license holder to seal documents; §1001.405 of the Act, which requires a business entity that offers or performs engineering services to be registered with the Board; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.33. Sealing Procedures.

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

(f) License holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their engineering work before such work is released from their control.

(1) The signature and date shall not obscure the engineer's name or license number in the seal.

(2) Engineering work required to bear a seal and signature includes the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding.

(3) All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion.

(g) - (m) (No change.)

(n) All engineering documents released, issued, or submitted by a licensee, including preliminary documents, shall clearly indicate the firm name and registration number of the engineering firm by which the engineer is employed.

(1) If the engineer is employed by a local, State, or Federal Government agency, then only the name of the agency shall be required.

(2) If the engineer is exempt from sealing a document under subsection (m) of this section, but elects to seal a document, then only the name of the employer shall be required.

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805008

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.51

The Texas Board of Professional Engineers proposes an amendment to §137.51, relating to General Practice.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by removing the implication that firms are held accountable to the same professional conduct required of licensed professional engineers.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.51. General Practice.

(a) In order to safeguard, life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the rules relating to professional conduct in this title shall be binding on every person holding a license ~~and on all firms~~ authorized to offer or perform engineering services in Texas.

(b) - (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 September 15, 2008.

TRD-200805009

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.57

The Texas Board of Professional Engineers proposes an amendment to §137.57, relating to the requirement that Engineers Shall be Objective and Truthful.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and lan-

guage changes. This proposed rule aligns the rule language with statute by correcting punctuation.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.57. Engineers Shall be Objective and Truthful.

(a) (No change.)

(b) The issuance of oral or written assertions in the practice of engineering shall not be:

(1) fraudulent,

(2) deceitful, or

(3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(c) - (d) (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 September 15, 2008.

TRD-200805010

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.63

The Texas Board of Professional Engineers proposes an amendment to §137.63, relating to the Engineers' Responsibility to the Profession.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by correcting punctuation and grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.63. Engineers' Responsibility to the Profession.

(a) (No change.)

(b) The engineer shall:

(1) endeavor to meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, ordinances, or standards in the performance of engineering services;

(2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services; [and]

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules; [-]

(4) act as faithful agent for their employers or clients; [-]

(5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party; and [-]

(6) practice engineering in a careful and diligent manner.

(c) The engineer shall not:

(1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of engineering;

(2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;

(5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment; or

(6) solicit professional employment in any false or misleading advertising.

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 September 15, 2008.

TRD-200805011

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



SUBCHAPTER D. FIRM AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §137.71

The Texas Board of Professional Engineers proposes an amendment to §137.71, relating to the use of Firm Names.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the

state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.71. Firm Names.

Pursuant to §1001.405(e), a business entity that is not registered with the board may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the practice of engineering by using the terms:

- (1) "engineer,"
- (2) "engineering,"
- (3) "engineering services,"
- (4) "engineering company,"
- (5) "engineering, inc.,"
- (6) "professional engineers,"
- (7) "licensed engineer,"
- (8) "registered engineer,"
- (9) "licensed professional engineer,"
- (10) "registered professional engineer," [øf]
- (11) "engineered," or

(12) any abbreviation or variation of those terms listed in paragraphs (1) - (11) of this section, or directly or indirectly use or cause to be used any of those terms in combination with other words.

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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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 26, 2008
For further information, please call: (512) 440-7723



22 TAC §137.73

The Texas Board of Professional Engineers proposes an amendment to §137.73, relating to the use of Firm Record Modifications.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.73. *Firm Record Modifications.*

(a) Each registered firm shall notify the board in writing not later than 30 days after [œf] a change in the business entity's:

- (1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;
- (2) officers or directors;
- (3) employment status of the professional engineers of the firm; or
- (4) operation including dissolution of the firm or that the firm no longer offers to provide or is not providing engineering services to the public in Texas; or

(5) operation including addition or dissolution of branch and/or subsidiary offices.

(b) (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 September 15, 2008.

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 26, 2008
For further information, please call: (512) 440-7723



22 TAC §137.77

The Texas Board of Professional Engineers proposes an amendment to §137.77, relating to Firm Registration Compliance. The proposed amendment is related to requirements for releasing engineering work by registered firms.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes.

In addition, the proposed rule change adds a requirement that all engineering work released by a registered firm include the name and registration number of the registered engineering firm. Upon adoption, it is the intent of the Board to phase-in enforcement actions concerning this rule, and the Board will fully enforce against this rule beginning January 1, 2010. After adoption and until January 1, 2010, firms who violate the rule will be notified of the violation and instructed how to comply with the rule. This implementation period will allow time for licensees, registered engineering firms, and the public to become informed and modify sealing procedures to comply with the new rule. During this implementation period, outreach (presentations, examples, etc.) will be provided by the Board.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there may be a minor fiscal impact anticipated for state government and the agency as there may be an increase in investigations and administrative penalties incurred for violations of this rule. Mr. Kinney has determined that there may be a minor fiscal impact to licensees or industry due to revisions in their sealing procedures.

Mr. Kinney has determined there may be a minor fiscal impact, related to potential costs for modifying existing processes and procedures, for the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. In the preparation of this rule, a Regulatory Flexibility Analysis has been performed to include alternatives for licensees and engineering firms. After considering other options, including requiring specific and potentially costly physical seals for engineering firms, mandatory design requirements for indicating engineering firm registration, and a rule with no exemptions regardless of the type of engineering being performed, the Board prepared the current rule lan-

guage. By not requiring a specific design method to indicate firm name and registration number, the current rule language should only have an impact in terms of employee time required to revise a current design sheet or report. The actual cost is expected to be minimal and difficult to estimate. The cost will vary depending on company procedures and internal costs. Each company will likely need to spend no more than 30-60 minutes to adjust their procedures to comply with this rule. The largest potential impact would be realized by larger engineering firms that may have to propagate design standards through departments and across multiple offices.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is consumers of engineering work will be better able to identify firm providing engineering services and determine relationship between the engineer and the firm.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.401 of the Act, which requires a license holder to seal documents; §1001.405 of the Act, which requires a business entity that offers or performs engineering services to be registered with the Board; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.77. Firm Registration Compliance.

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

(h) All engineering documents released, issued, or submitted by or for a registered engineering firm, including preliminary documents, must clearly indicate the firm name and registration number.

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 September 15, 2008.

TRD-200805014

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §137.79

The Texas Board of Professional Engineers proposes an amendment to §137.79, relating to the Standards for Compliance with the Professional Services Procurement Act.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by removing superfluous language.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.79. Standards for Compliance with Professional Services Procurement Act.

~~[(a)]~~ When procuring professional engineering services, a governmental entity and/or its representative(s) shall comply with the requirements of Subchapter A, Chapter 2254, Texas Government Code and shall select and award on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price and shall not select services or award contracts on the basis of competitive bidding.

~~[(b)]~~ A governmental entity and/or its representative(s) shall follow the process and procedures as prescribed in Chapter 2254, Texas Government Code, or the board shall report the governmental entity to the appropriate jurisdictional authority.]

~~[(c)]~~ A governmental entity and/or its representative(s) is responsible for determining if professional engineering services are required based on if the services, contract or activity is included in the practice of engineering as defined in §1001.003 of the Act. A governmental entity may refer to or request an advisory opinion from the board to assist in this decision.]

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §139.11

The Texas Board of Professional Engineers proposes an amendment to §139.11, relating to the confidentiality of complaints and the resultant investigative case file.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes.

In addition, the proposed rule change properly reflects the intent of statute by maintaining confidentiality of the investigative file until the case is either closed or charges are formally filed at the State Office of Administrative Hearings, while also identifying documents that are releasable earlier in the investigation.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.11. Complaints--General.

(a) (No change.)

(b) The board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed with the State Office of Administrative Hearings or after the investigative file [~~investigation~~] is closed. The following documents in an investigative file are releasable to a respondent or an attorney representing the respondent before the Board during the informal resolution process of a complaint: copies of the original complaint documentation; copies of communications to or from the Board and the complainant, the respondent, witnesses, technical experts used by the Board to advise on the complaint issues, and private or public entities regarding requests for records, documents, or information regarding the complaint; and witness interview reports.

(c) (No change.)

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

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TRD-200805016

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §139.13

The Texas Board of Professional Engineers proposes an amendment to §139.13, relating to the general aspects of filing a complaint.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes.

In addition, the proposed rule change corrects contact information to the agency and correctly identifies the process for providing complaint information to the board.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Execu-

tive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.13. Filing a Complaint.

(a) A person who wishes to make a complaint with the board may obtain assistance, filing information, or contact the board by:

- (1) visiting the board website at www.tbpe.state.tx.us;
- (2) sending electronic mail to peboard@tbpe.state.tx.us;
- (3) sending written correspondence to: 1917 IH 35 South, Austin, Texas 78741;
- (4) sending fax to (512) 440-5715 [442-1414];
- (5) telephoning the board office at (512) 440-7723; or
- (6) visiting the board office located at 1917 IH 35 South, Austin, Texas.

(b) A person may submit the complaint in writing through mail, electronic mail or facsimile. ~~[An oral or verbal complaint may be made by telephone or in person.]~~

(c) A complainant may contact the board in person or by telephone to file a complaint. However, the complaint shall be submitted in writing containing sufficient information to determine jurisdiction. Upon receipt of the written complaint and supporting evidence, it will be logged and assigned a case number. [A complaint submitted orally or verbally containing sufficient information to determine jurisdiction shall be logged and assigned a case number; however, a written and signed complaint must be submitted within 30 days of the initial oral or verbal complaint or the board may dismiss the complaint as frivolous if applicable as defined in §139.21(e).]

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805017

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §139.15

The Texas Board of Professional Engineers proposes an amendment to §139.15, relating to the processing of complaints.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.15. Processing a Complaint.

(a) Upon receipt of a complaint, the board staff shall assign the complaint a case ~~[complaint]~~ number.

(b) (No change.)

(c) If a potential violation exists and the board has jurisdiction over and authority to resolve the complaint, the board staff shall set a priority for the complaint and initiate disciplinary proceedings against the subject of the complaint. In setting the priority for complaints, a complaint from the public or initiated by the board or board staff that alleges action that could potentially harm the public shall be rated highest priority and investigation for this type complaint takes precedence over all other complaints. Complaints rating highest priority may include, but are not limited to, those complaints involving incompetence, gross negligence, plan stamping, or practicing without a license. The board staff shall report status of the investigation and preliminary determination to the executive director and complainant within 45 days of receiving complaint that rates as a high priority.

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 September 15, 2008.

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 26, 2008
For further information, please call: (512) 440-7723



22 TAC §139.17

The Texas Board of Professional Engineers proposes an amendment to §139.17, relating to the investigation of complaints.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by clarifying language and correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.17. *Investigating a Complaint.*

- (a) (No change.)
- (b) Board staff and persons acting in the official capacity of the board have authority to:
 - (1) informally or formally request information and documentation from the involved parties,
 - (2) perform site visits or inspections to investigate the complaint,
 - (3) contract technical consultants and other services to investigate and evaluate aspects of the complaint or evidence,
 - (4) subpoena information, as required,

(5) seek the assistance of local and state law enforcement authorities, and/or

(6) seek out any other investigative action needed to assist in the resolution of the complaint.

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

(e) If the board staff intends to [~~will likely~~] dismiss the complaint because the investigation of the complaint does not produce sufficient evidence to substantiate a violation of the Act or board rules, the board staff will inform the complainant of the rationale for the determination prior to reporting the dismissal to the board.

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

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

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Dale Beebe Farrow, P.E.
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For further information, please call: (512) 440-7723



22 TAC §139.19

The Texas Board of Professional Engineers proposes an amendment to §139.19, relating to the final resolution of complaints.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by clarifying language and correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of

its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.19. Final Resolution of Complaint.

(a) Upon the completion of an investigation, the board staff shall present to the executive director a report of investigation and recommendation of final resolution of the complaint. If sufficient evidence and documentation exists to substantiate one or more violations of the Act or board rules has occurred, the board shall proceed as prescribed in §139.31 of this chapter (relating to Enforcement Actions for Violations of the Act). These actions may include, but are not limited to, one or more of the following:

(1) enter into an agreement of voluntary compliance;

(2) agree to informal Consent Order or Agreed Board Order that may include an [consent order or agreed board order with] administrative penalty and/or compliance requirements [requirement];

(3) referral of injunctive or criminal actions to the proper authorities;

(4) referral [of a final order] to the State Office of Administrative Hearings which will result in a Final Order for dismissal or issuance of a sanction; or

(5) other action as provided by law.

(b) If sufficient evidence and documentation does not exist to substantiate that one or more violations of the Act or board rules has occurred and disciplinary action is not warranted, the board staff shall recommend to dismiss the complaint and report the dismissal to 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 September 15, 2008.

TRD-200805020

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §139.21

The Texas Board of Professional Engineers proposes an amendment to §139.21, relating to the reporting of complaint status to the Board.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by replacing the 'B' in Board with a lowercase letter.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the

state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.21. Reporting Complaint Status to the Board.

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

(c) If the executive director determines that the complaint filed is frivolous or without merit, the case information will be classified as confidential and as such the information is not subject to discovery, subpoena, and or other disclosure. The board shall approve this action upon acceptance of the report and the case will then be closed. Closed cases will not be reconsidered for classification under this rule.

(1) A "frivolous complaint" means a complaint that the executive director has determined:

(A) was made for the purpose of harassment; and

(B) does not demonstrate harm to any person.

(2) A complaint that is determined by the executive director to be "without merit" would include situations where a:

(A) professional engineer, individual, or firm has been determined to not be responsible or connected in any way with the alleged violative action in the complaint, as it relates to a violation of the Engineering Practice Act and or board [Board] rules; or,

(B) case has been determined to be outside the jurisdiction of the board [Board]; or,

(C) case has been determined to have been administratively opened in error.

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 September 15, 2008.

TRD-200805021

Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



22 TAC §139.23

The Texas Board of Professional Engineers proposes an amendment to §139.23, relating to Technical Consultants.

As a part of the rule review required by Chapter 2001, Texas Government Code, the board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.23. *Technical Consultants.*

(a) (No change.)

(b) The executive director may select technical consultants on the basis of their qualifications and may maintain a list of experts as technical consultants. The selection process may require documentation of a technical consultants qualifications including transcripts; verifiable experience records; references statements; texts, articles, and other published works; and compliance history and records. The board may interview prospective technical consultants. The board shall review a potential technical consultant's documentation to determine if the person's records demonstrate expert status and competency in a technical area. A technical consultant must inform the board and decline an assignment if the resource has personal knowledge of the com-

plaint, parties involved in the complaint, or other conflicts [~~conflict~~] of interest.

(c) (No change.)

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

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.31

The Texas Board of Professional Engineers proposes an amendment to §139.31, relating to Enforcement Actions for Violations of the Act.

As a part of the rule review required by Chapter 2001, Texas Government Code, the board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by clarifying language and correcting grammar.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.31. Enforcement Actions for Violations of the Act.

(a) Under the authority and provisions of §1001.201, §1001.202, and Subchapters J, K, and L of the Texas Engineering Practice Act (Act), the board shall take action against a person or entity, upon determination that censure is warranted, for a violation of the Act and/or board rules. An action may be composed of one or more of the following:

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

(b) All actions issued by the board will take the form of a Board Order [~~board order~~] and shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all enforcement actions shall be published in the board newsletter and on the board website, may be issued [~~released~~] in a press release, and shall be transmitted to the National Council of Examiners for Engineering and Surveying.

(c) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805023

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §139.33

The Texas Board of Professional Engineers proposes an amendment to §139.33, relating to Informal Proceedings.

As a part of the rule review required by Chapter 2001, Texas Government Code, the board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule identifies board documents with their proper legal titles.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35

South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.33. Informal Proceedings.

If, after evaluation of the respondent's response a violation appears evident, the executive director shall initiate enforcement action. Before proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.

(1) The executive director may also offer the respondent a Consent Order [~~consent order~~] that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraph [~~paragraphs~~] (2) or (3) of this subsection will be followed.

(2) The respondent may request an informal conference to present additional evidence and discuss details of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint an informal conference committee composed of one board member or board representative, the executive director or executive director's designee, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the details of the allegations and shall recommend:

(A) dismissal;

(B) a proposal for an Agreed Board Order [~~agreed board order~~] for disciplinary actions that will be presented to the board for acceptance or rejection; or

(C) scheduling of a formal hearing.

(3) Any board action under this subsection which is not informally disposed by Agreed Board or Consent Order [~~agreed or consent order~~], will be considered a contested case and will be handled in accordance with applicable law and board rules.

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 September 15, 2008.

TRD-200805024

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §139.35

The Texas Board of Professional Engineers proposes an amendment to §139.35, relating to Sanctions and Penalties.

As a part of the rule review required by Chapter 2001, Texas Government Code, the board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. The proposed amendment to subsection (a) aligns the rule language with statute by simplifying language and correcting punctuation. The proposed amendment to subsection (b) aligns the suggested sanction table with the supporting rules and statute. The specific changes are twofold and the first relates to the new requirement of including firm identification on all work that has the engineer's seal and signature, which is outlined in §137.33(n). The second change is made to reflect a prior change in §137.31(e) and (f), related to rubber stamps or computer generated signatures, which are now permitted. The amendments to subsection (d) are also twofold and the first relates to the new requirement that requires firm identification on all engineering work that has an engineer's seal and signature, which is outlined in §137.77(h). The second change is made to provide a suggested sanction to support §137.73, related to the requirement that a firm notify the board of their record modifications.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.35. *Sanctions and Penalties.*

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. The maximum administrative penalty shall be \$3000 per violation. Pursuant to §1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth

in the final board order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including~~[-]~~
 - ~~[(A)]~~ the nature, circumstances, extent, and gravity of the prohibited act~~[-]~~ and
 - ~~[(B)]~~ the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) - (6) (No change.)
 - (b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:
Figure: 22 TAC §139.35(b)
 - (c) (No change.)
 - (d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm registration:
Figure: 22 TAC §139.35(d)
 - (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 September 15, 2008.

TRD-200805025

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.43

The Texas Board of Professional Engineers proposes an amendment to §139.43, relating to License Holder with Criminal Convictions.

As a part of the rule review required by Chapter 2001, Texas Government Code, the board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by clarifying language and correcting punctuation.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.43. License Holder with Criminal Convictions.

(a) The board [~~Board~~] shall follow the requirements of Chapter 53, Texas Occupations Code, and shall revoke the license of any license holder incarcerated after licensure as a professional engineer as a result of:

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

(3) revocation of mandatory supervision [~~after licensure as a professional engineer~~].

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

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805026

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



22 TAC §139.49

The Texas Board of Professional Engineers proposes an amendment to §139.49, relating to License Suspension/Revocation Based on License Holder's Status Review.

As a part of the rule review required by Chapter 2001, Texas Government Code, the board must review and update the existing rules. During this review, several minor or non-substantive changes were identified. These include minor grammar and language changes. This proposed rule aligns the rule language with statute by changing the "B" in Board to a lowercase letter.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that

there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rules to meet statute.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§139.49. License Suspension/Revocation Based on License Holder's Status Review.

(a) The board [~~Board~~] may review the status of a license holder the board [~~Board~~] believes:

(1) may have been issued a license through fraud or error;

or

(2) may constitute a threat to the public health, safety, or welfare.

(b) The board [~~Board~~] may, as set out in §139.31[~~7~~] of this chapter (relating to Enforcement Actions for Violations of the Act) suspend or revoke a license held by a person whose status is reviewed under this section.

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 September 15, 2008.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 440-7723



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.6

The Texas State Board of Examiners of Psychologists proposes amendments to §461.6, File Updates. The amendments are being proposed to clarify the rule.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§461.6. *File Updates.*

An applicant or licensee is responsible for keeping his or her professional file updated. All changes must be reported to the Board in writing within 90 days. Additionally, a name change request must be accompanied by a copy of a current driver's license, social security card, marriage license, divorce decree or court order stating name change.

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

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Sherry L. Lee
Executive Director

Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes amendments to §461.11, concerning Continuing Education. The amendments are being proposed to clarify requirements for on-line renewal of licenses that are audited.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§461.11. *Continuing Education.*

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

(f) Audit. The Board conducts two types of audits. Licensees shall comply with all Board requests for documentation and information concerning compliance with continuing education and/or Board audits.

(1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the Board's continuing education requirements. The Board will notify a licensee by mail of the audit. Upon receipt of an audit notification, licensees planning to renew their licenses must submit requested documentation of compliance to the Board with their annual renewal form no later than the renewal date of the license. A licensee who is audited may renew their license online provided that they submit the continuing education documentation to the Board at least two weeks in advance of their online renewal so that it can be pre-approved. Licensees wishing to retire their licenses should submit the requested documentation no later than the renewal date of the license.

(2) (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 September 11, 2008.

TRD-200804933
Sherry L. Lee
Executive Director

Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 26, 2008
For further information, please call: (512) 305-7706



22 TAC §461.18

The Texas State Board of Examiners of Psychologists proposes new §461.18, concerning Minimum Data Set Requirement for Online Renewals. The proposed new rule implements Senate Bill 29, 80th Texas Legislature, that requires the Board to collect a set of standardized information about the training and practices of licensees through the Texas Online system.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§461.18. Minimum Data Set Requirement for Online Renewals.

Licensees who choose to renew their licenses through Texas Online are required to provide a standardized set of information about their training and practices and to update this information at the time of each online renewal of their licenses.

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 September 11, 2008.

TRD-200804934

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 305-7706



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes amendments to §465.1, concerning Definitions. The amendments are being proposed to clarify that the subject of a forensic evaluation is not considered a patient.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§465.1. Definitions.

The following terms have the following meanings: [~~The following terms have the following meanings:~~]

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

(3) "Forensic psychology" is the provision of psychological services involving a court of law or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. A person who is the subject of forensic evaluation is not considered to be a patient under these rules. "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body to assist in addressing a forensic referral question.

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

(7) "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview except as identified in paragraph (3) of this section, where the subject of forensic evaluation is not considered to be a patient.

(8) - (14) (No change.)

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 305-7706



22 TAC §465.17

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.17, concerning Therapy and Counseling. The amendment is being proposed to correct a rule reference in the rule.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§465.17. Therapy and Counseling.

(a) (No change.)

(b) Treatment plans.

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

(4) Licensees confer with and obtain consent from the patient, or client or other recipient(s) of services concerning significant alterations in the treatment plan in accordance with Board rule §465.11(b) of this title (relating to Informed Consent/Describing Psychological Services) [465.11(a)(2)].

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, concerning Forensic Services. The amendments are being proposed to clarify requirements for forensic services, especially forensic evaluations.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§465.18. Forensic Services.

(a) (No change.)

(b) Limitation on Services.

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

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

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following: [Licensees who interview or examine an individual for purposes of providing forensic services must first inform the individual of the specific purpose of the interview or examination, the party on whose behalf they are performing the services, the use to which the information gathered will be put and who will have access to the results. If there are multiple parties, the psychologist must obtain written informed consent from all adult participants unless informed consent is precluded by court order. All participants must be made aware of the purpose and scope of the evaluation, who has requested the service, and who will be paying fees. Psychologists also inform parties on limits to confidentiality where the engagement involves testimony.]

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

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

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

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

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

(6) The people or entities who will have access to the psychological records;

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

(8) Applicable limits on confidentiality; and

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

(d) Child Custody Evaluations.

(1) The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best

psychological interests of the child[~~who is the client~~]. Other factors or specific factors may also be addressed given a specific forensic services engagement.

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

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

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

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

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 September 11, 2008.

TRD-200804937

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



22 TAC §465.37

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.37, concerning Compliance with All Applicable Laws. The amendment is being proposed to indicate that licensees who serve as experts must adhere to state law.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§465.37. *Compliance with All Applicable Laws.*

Licensees comply with all applicable state and federal laws affecting the practice of psychology including, but not limited to:

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

(6) Texas Code of Criminal Procedure Chapter 46B, Incompetency to Stand Trial, and Chapter 46C Insanity Defense, provisions relating to distribution of forensic psychological evaluation reports [Articles 46B and 46C as they relate to the access and distribution of forensic evaluations].

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 September 11, 2008.

TRD-200804938

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 26, 2008

For further information, please call: (512) 305-7706



CHAPTER 471. RENEWALS

22 TAC §471.6

The Texas State Board of Examiners of Psychologists proposes amendments to §471.6, concerning Renewal Penalty Waiver for Licensees on Military Deployment. The amendments are being proposed to clarify the rule.

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

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

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe Street, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

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

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

§471.6. *Renewal Penalty Waiver for Licensees on Military Deployment.*

(a) Licensees who fail to renew their licenses in a timely manner due to active deployment in the United States military outside Texas at the time of renewal shall not be penalized if, within 180 days of return from active duty deployment, the licensee provides the Board:

- and
- (1) Evidence that all renewal requirements have been met;
 - (2) Official verification of deployment dates.

(b) A license renewed in this manner is not due for renewal again until one year after the licensee's next birthday month.

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 September 11, 2008.

TRD-200804939

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER G. SPECIAL APPRAISAL

34 TAC §§9.2001 - 9.2005

The Comptroller of Public Accounts proposes new §§9.2001 - 9.2005, regarding standards for determining when land that is currently qualified for agricultural or productivity appraisal under Tax Code, Chapter 23, Subchapter D, is entitled to be qualified as agricultural land used for wildlife management for property tax appraisal purposes. The new sections will be under new Subchapter G, Special Appraisal. The new sections are being proposed to replace the current §9.4003, which the comptroller proposes to repeal. The new sections implement Tax Code, §23.251 by setting out rules and standards governing the qualification of agricultural land used for wildlife management and clarifying certain issues that have arisen under current §9.4003.

Land that qualifies for agricultural appraisal is appraised for property tax purposes based on the land's capacity to produce agricultural products, or its productivity value, rather than the value it would sell for on the open market, or its market value. In most cases, productivity value is lower than market value; so a landowner's property tax bill is usually lower if the land qualifies for agricultural appraisal based on its productivity value.

In 1978, voters approved adding Article VIII, Section 1-d-1, to the Texas Constitution, which permitted productivity appraisal for "open-space land used for farm and ranch purposes." The amendment was implemented in 1979 with the enactment of the Property Tax Code, which permitted productivity appraisal for land devoted primarily to agricultural use. Wildlife management, however, was not defined as an agricultural use, so land used for that purpose was appraised at its market value.

In 1995, Texas voters approved Proposition 11, which amended Article VIII, Section 1-d-1 of the Texas Constitution, to permit productivity appraisal for land used to manage wildlife to promote the preservation of open-spaced land. House Bill 3123, 77th Legislature, 2001, implemented this constitutional amendment by making wildlife management an agricultural use that quali-

fies the land for agricultural appraisal under the Tax Code. This amendment provided landowners with an additional means, intended to be revenue and tax neutral, of preserving open-spaced land by allowing land used for traditional agricultural practices to be converted to wildlife management and remain qualified for productivity appraisal.

Tax Code, §23.521 requires the Parks and Wildlife Department (TPWD), with the assistance of the comptroller, to develop standards for determining if qualified agricultural land that has been converted to wildlife management use is entitled to productivity appraisal (referred to in this preamble as "wildlife management appraisal"). Tax Code, §23.521 further requires the comptroller to adopt these standards by rule and distribute those rules to each appraisal district.

New §§9.2001 - 9.2005 clarify existing definitions and add new definitions, reorganize the existing wildlife use appraisal regions, modify the standards for a qualifying wildlife management plan and the requirements for qualifying land for wildlife management appraisal, and set out the formula for determining the amount of space in certain tracts that must be devoted to wildlife management to qualify the land for wildlife management appraisal.

New §9.2001, concerning Purposes and Definitions, defines certain words and terms that are used throughout the rules to establish a common terminology and avoid ambiguity. Subsection (a) sets out the purposes of the subtitle. Subsection (b) identifies comptroller and TPWD publications and provide information on how they can be obtained. These publications provide landowners and appraisal districts with information concerning the qualification of land for wildlife management appraisal.

New §9.2002, concerning Wildlife Use Appraisal Regions, identifies the counties within each appraisal region.

New §9.2003, concerning Wildlife Management Plan, sets forth the required contents of a wildlife management plan, which is required to qualify for wildlife management appraisal. Subsections (a) and (b) require a landowner who seeks to qualify land for wildlife management appraisal to submit a wildlife management plan, on a form prescribed by TPWD, to the appraisal district in which the tract of land is located. The chief appraiser may accept, but may not require, a plan submitted on a form other than the TPWD form, if the plan contains all of the information required. Subsection (c) specifies the required contents of the wildlife management plan. Subsection (d) requires a landowner to intend the wildlife management practices and activities to benefit specific indigenous species and requires these activities to be consistent with the practices and activities contained in the publications referenced in §9.2001. Subsection (e) clarifies standards for qualifying land that provides habitat for resident species that are federally listed as endangered or threatened, or designated as candidate species for listing. Subsection (f) allows a wildlife management property association to prepare a single wildlife management plan if the plan addresses the requirements of this subchapter for each tract of land in the wildlife management property association and is signed by each member of the wildlife management property association. Subsection (g) allows appraisal districts to require a signed annual report, submitted on a form prescribed by TPWD, that shows how the wildlife management plan was implemented during the previous tax year. The new section permits a wildlife management property association to file a single annual report if it is signed by each member of the wildlife management property association and to document each property owner's affirmative statement

that the wildlife management activities and practices specified in a wildlife management plan have taken place.

New §9.2004, concerning Qualification for Agricultural Appraisal Based on Wildlife Management Use, incorporates and clarifies the statutory requirements for qualifying land for wildlife management appraisal. Subsection (a) requires the chief appraiser to determine if land qualifies for wildlife management appraisal by applying the wildlife management appraisal qualification criteria set forth in the subchapter. Subsection (b) sets out wildlife management use standards that must be met to qualify land for wildlife management appraisal. Subsection (c) sets forth standards the chief appraiser is required to consider to determine if land is used primarily for wildlife management as required by law, which are: (1) the tract is being actively managed under a wildlife management plan; (2) the landowner gives wildlife management practices and activities priority over other uses and activities on the tract of land; and (3) secondary uses of the property do not significantly and demonstrably interfere with the wildlife management practices, and activities being conducted on the land or are not detrimental to the species targeted for management. Subsection (d) clarifies that the terms "primary use" and "principle use," as used in this subchapter.

New §9.2005, concerning Wildlife Use Requirement, sets out a mathematical formula used to determine the number of acres that must be devoted to wildlife management use to qualify certain tracts of land for wildlife management appraisal. The wildlife use requirements apply to land that was qualified for wildlife management appraisal, if the tract was reduced in size after January 1 of the preceding year. This formula determined the "wildlife use percentages" that are set out by the existing rule, but the formula is not in the current rule. The comptroller and TPWD propose to adopt the formula so that the standards landowners must meet to qualify land for wildlife management appraisal will be more transparent to taxpayers, appraisal districts, and interested members of the public. By setting the formula out, neither the comptroller nor TPWD intends to change the manner in which the wildlife use percentage required by the existing rule has been interpreted and administered. The formula described in subsection (a) is: the tract size in acres, minus 1, divided by the tract size in acres. The "one" in the formula is not a unit of measure; it functions only to create a dividend that is slightly smaller than the divisor in order to yield a figure that is an indicator of the spatial scale of effort that must exist for the tract to be presumed to be in bona fide wildlife management. Subsection (b) would exempt land from the section's requirements if the qualified tract of land is the same size or larger than it was on January 1 of the preceding tax year. Subsections (c) - (e) establish three sets of wildlife use requirements for each wildlife use appraisal region. Subsections (f) and (g) are transitional provisions. Current §9.4003, which is proposed for repeal, provides that tracts of land that qualified for wildlife management appraisal before January 1, 2002 are not required to meet the wildlife use percentage. Subsection (f) mirrors that provision for the new wildlife use requirement. Subsection (g) applies to tracts of land in three counties for which the proposed wildlife management use requirement increases the current wildlife management percentage. Land in these counties that qualified for wildlife management appraisal on January 1, 2008 continues to qualify by meeting the wildlife management percentage that is currently in place.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed new rules would benefit the public through more consistent administration by county appraisal districts, and through greater understanding, by the public and appraisal district personnel, of the standards and requirements that must be met to convert qualified agricultural land to a wildlife management use that qualifies the land for wildlife management appraisal. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed rules may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new sections are proposed under Tax Code, §23.521, which requires that the Comptroller adopt rules that set standards developed by TPWD with the comptroller's assistance.

The proposed new sections affect Tax Code, Chapter 23, Subchapter D.

§9.2001. Purpose and Definitions.

(a) The purpose of this section is to implement the intent of Tax Code, §23.51(1) and (7) and §23.251 as follows:

(1) to encourage the preservation of open space for wildlife management and conservation of the state's natural heritage in all areas of the state;

(2) to create definitive standards for tax appraisers to follow in determining the qualification of property for appraisal on the basis of wildlife management use;

(3) to create a mechanism in addition to traditional agricultural use to allow ranchers, farmers, and land managers to conserve open space;

(4) to affirm local control of property taxation;

(5) to preserve revenue neutrality for all concerned parties;
and

(6) to allow each property currently qualified in wildlife management use to continue being appraised as open space land.

(b) The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Manual for the Appraisal of Agricultural Land--a publication of the Comptroller of Public Accounts. A copy of this publication may be obtained by contacting Texas Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528, or online through www.window.state.tx.us.

(2) Guidelines for Qualification of Agricultural Land in Wildlife Management Use--a publication of the Comptroller of Public Accounts. A copy of this publication may be obtained by contacting Texas Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528, or online through www.window.state.tx.us.

(3) Comprehensive Wildlife Management Planning Guidelines--a series of publications of Texas Parks and Wildlife Department. Copies of these publications may be obtained by contacting Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744-3291 or online through www.tpwd.state.tx.us. There

is a separate publication for the following ecoregions or groups of ecoregions:

- (A) Edwards Plateau and Cross Timbers and Prairies;
- (B) Gulf Prairies and Marshes;
- (C) High Plains and Rolling Plains;
- (D) Pineywoods;
- (E) Post Oak Savannah and Blackland Prairie;
- (F) South Texas Plains; and
- (G) Trans-Pecos.

(4) Wildlife management practices--the management categories listed in Tax Code, §23.51(7)(A)(i) - (vii), habitat control, erosion control, predator control, providing supplemental supplies of water, providing supplemental supplies of food, providing shelters, and making of census counts to determine population.

(5) Wildlife management activities--the method of implementation of wildlife management practices through the specific activities described in *Guidelines for Qualification of Agricultural Land in Wildlife Management Use* and the *Comprehensive Wildlife Management Planning Guidelines* for the ecoregion in which the tract of land is located.

(6) Tract of land--the entire area of a parcel or contiguous parcels of land as reflected in appraisal district records, under common ownership. The presence of public roads and bodies of water does not affect the contiguity of the parcels of land.

(7) Wildlife management property association--a group of landowners whose tracts of land:

(A) are contiguous (the presence of public roads and bodies of water does not affect the contiguity of the tracts of land);

(B) are subject to the wildlife use requirements set forth in §9.2005 of this title (relating to Wildlife Use Requirement);

(C) are appraised as qualified open space land under Tax Code, Chapter 23, Subchapter D; and

(D) are subject to a written agreement that legally obligates the owner of each tract of land to perform the management practices and activities necessary for each tract of land to qualify under this subchapter for appraisal based on wildlife management use.

(8) Indigenous wildlife--all native animals that originated in or naturally migrate into or through an area, and that are capable of living naturally in that area, but does not include exotic livestock as defined by Agriculture Code, §142.001(4).

(9) Breeding population--a group or population of indigenous wildlife that is capable of perpetuating itself through natural breeding.

(10) Migrating population--indigenous wildlife that moves between seasonal ranges.

(11) Wintering population--indigenous wildlife that occupies an area during the winter as a consequence of natural migratory behavior.

(12) Human use--the use of indigenous wildlife or habitat for food, medicine, or recreation by humans.

(13) Recreation--an active or passive activity for pleasure or sport.

(14) Wildlife use requirement--the number calculated in the manner required by §9.2005(a), as specified by §9.2005(c)(1) - (12) of this title (relating to Wildlife Use Requirement), for each wildlife use appraisal region.

§9.2002. Wildlife Use Appraisal Regions.

Wildlife use appraisal regions are designated by Texas Parks and Wildlife Department as follows:

(1) Trans Pecos Region--Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, and Winkler counties.

(2) High Plains Region--Andrews, Armstrong, Bailey, Carson, Castro, Cochran, Crosby, Dallam, Dawson, Deaf Smith, Ector, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Howard, Hutchinson, Hockley, Lamb, Lubbock, Lynn, Martin, Midland, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, Upton, and Yoakum counties.

(3) Rolling Plains Region--Archer, Baylor, Borden, Briscoe, Callahan, Childress, Clay, Coke, Coleman, Collingsworth, Concho, Cottle, Dickens, Donley, Fisher, Foard, Garza, Gray, Hall, Hardeman, Haskell, Hemphill, Jones, Kent, King, Knox, Lipscomb, McCulloch, Mitchell, Motley, Nolan, Roberts, Runnels, Scurry, Shackelford, Stonewall, Taylor, Throckmorton, Tom Green, Wheeler, Wichita, and Wilbarger counties.

(4) Edwards Plateau (Western) Region--Crockett, Edwards, Irion, Kimble, Menard, Reagan, Real, Schleicher, Sterling, Sutton, and Val Verde counties.

(5) Edwards Plateau (Eastern) Region--Bandera, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Llano, Mason, San Saba, Travis, and Williamson counties.

(6) Cross Timbers and Prairies Region--Bell, Bosque, Brown, Comanche, Cooke, Coryell, Denton, Eastland, Erath, Hamilton, Hood, Jack, Johnson, Lampasas, Mills, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wise, and Young counties.

(7) Gulf Prairies and Marshes Region (Upper Coast)--Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Harris, Jackson, Jefferson, Matagorda, Orange, Victoria, Waller, and Wharton counties.

(8) Gulf Prairies and Marshes Region (Lower Coast)--Aransas, Brooks, Cameron, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Refugio, San Patricio, and Willacy counties.

(9) Post Oak Savannah Region--Bastrop, Bee, Brazos, Burleson, Caldwell, Dewitt, Fayette, Franklin, Freestone, Goliad, Gonzales, Grimes, Guadalupe, Henderson, Hopkins, Karnes, Lavaca, Lee, Leon, Madison, Rains, Red River, Robertson, Titus, Van Zandt, Washington, and Wilson counties.

(10) Blackland Prairie Region--Collin, Dallas, Delta, Ellis, Falls, Fannin, Grayson, Hill, Hunt, Kaufman, Lamar, Limestone, McLennan, Milam, Navarro, and Rockwall counties.

(11) Pineywoods Region--Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Gregg, Hardin, Harrison, Houston, Jasper, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Upshur, Walker, and Wood counties.

(12) South Texas Plains Region--Atascosa, Dimmit, Duval, Frio, Kinney, LaSalle, Live Oak, Jim Hogg, McMullen, Maverick, Medina, Starr, Uvalde, Webb, Zavala, and Zapata counties.

§9.2003. Wildlife Management Plan.

(a) A wildlife management plan shall be completed on the form prescribed by Texas Parks and Wildlife Department (TPWD) for each tract of land for which qualification for agricultural appraisal is sought based on wildlife management use. A copy of this wildlife management plan form may be obtained by contacting Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744-3291 or online through www.tpwd.state.tx.us. A chief appraiser may accept, but may not require, a wildlife management plan that is not on the form prescribed by TPWD if the wildlife management plan contains all of the information required by this section.

(b) The wildlife management plan shall be provided to the appraisal district in which the tract of land is located.

(c) The wildlife management plan must include:

(1) ownership information, property description and current use;

(2) the landowner's goals and objectives for the tract of land;

(3) the specific indigenous wildlife species targeted for management; and

(4) the specific management practices and activities to be implemented in support of the specific indigenous wildlife species targeted for management.

(d) The specific management practices and activities in the wildlife management plan shall be intended to benefit the specific indigenous wildlife species targeted for management, and shall be consistent with the practices and activities recommended in *Guidelines for Qualification of Agricultural Land in Wildlife Management Use* and the *Comprehensive Wildlife Management Planning Guidelines* for the ecoregion in which the tract of land is located, and the landowner's goals and objectives.

(e) If the tract of land provides habitat for species federally listed as endangered, threatened, or a candidate for listing as endangered or threatened, the wildlife management plan shall ensure that the specific management practices and activities do not harm the listed endangered, threatened, or candidate for listing as endangered or threatened species.

(f) A wildlife property association may prepare a single wildlife management plan, provided all required information is included for each tract of land in the wildlife management property association and the plan is signed by each landowner or an agent of the landowner designated in the manner required by Tax Code, §1.111 and §9.3044 of this title (relating to Appointment of Agents for Property Tax).

(g) An appraisal district may require, for each tract of land qualified for agricultural appraisal based on wildlife management use, that an annual report be filed showing how the wildlife management plan was implemented in any given year. A wildlife management property association may file a single annual report, if the report shows how the wildlife management plan was implemented on each tract of land in the wildlife management property association. If the report is required, it shall be completed on the form prescribed by TPWD and shall be signed by the landowner or an agent of the landowner designated in the manner required by Tax Code, §1.111 and §9.3044 of this title. If a single report is filed by a wildlife management property association, the report shall be signed by each landowner or an agent for each landowner designated in the manner required by Tax Code, §1.111 and §9.3044 of this title. A copy of the annual report form may be obtained by contacting Texas Parks and Wildlife Department,

4200 Smith School Road, Austin, Texas 78744-3291 or online through www.tpwd.state.tx.us.

§9.2004. *Qualification for Agricultural Appraisal Based on Wildlife Management Use.*

(a) The chief appraiser shall determine if land qualifies for agricultural appraisal based on wildlife management use in compliance with, and in a manner consistent with, §9.2005 of this title (relating to Wildlife Use Requirement), the *Manual for the Appraisal of Agricultural Land*, the *Guidelines for Qualification of Land in Wildlife Management Use*, and the *Comprehensive Wildlife Planning Guidelines* for the ecoregion in which the tract of land is located.

(b) A tract of land qualifies for agricultural appraisal based on wildlife management use if:

(1) the tract of land is appraised as qualified open space land under Tax Code, Chapter 23, Subchapter D;

(2) the landowner's primary use of the tract of land is wildlife management;

(3) the tract of land is actively being managed to sustain a breeding, migrating, or wintering population of indigenous wildlife through implementation of a wildlife management plan that meets the requirements of §9.2003 of this title (relating to Wildlife Management Plan);

(4) in each tax year for which the owner seeks to qualify the tract of land for agricultural appraisal based on wildlife management use, the landowner has selected at least three wildlife management practices and, using wildlife management activities, has implemented each of the selected practices to the degree of intensity that is consistent with the *Guidelines for Qualification of Agricultural Land in Wildlife Management Use* and the *Comprehensive Wildlife Management Planning Guidelines* for the ecoregion in which the tract of land is located and for the specific indigenous wildlife species targeted for management;

(5) the landowner manages indigenous wildlife for human use; and

(6) the tract of land meets the specified wildlife use requirements set forth in §9.2005 of this title, if applicable.

(c) The following factors indicate that the primary use of the land is wildlife management, and the chief appraiser shall take each factor into consideration when determining if the land is primarily used for wildlife management as required by subsection (b) of this section:

(1) the tract of land is actively being managed under a wildlife management plan as required by this section;

(2) the landowner gives the wildlife management practices and activities priority over other uses and activities that take place on the tract of land; and

(3) secondary uses of the property do not significantly and demonstrably interfere with the wildlife management practices and activities being conducted on the tract of land or are not detrimental to the indigenous wildlife targeted for management.

(d) For purposes of this subchapter, the *Manual for the Appraisal of Agricultural Land*, and the *Guidelines for Qualification of Agricultural Land in Wildlife Management Use*, "primary use" has the same meaning as "principal use."

§9.2005. *Wildlife Use Requirement.*

(a) A tract of land's wildlife use requirement is a number expressed as a percentage and calculated by subtracting one from the total number of acres in the tract of land and dividing the result by the total

number of acres in the tract of land. The following formula expresses the calculation, with "x" representing the tract of land's total acreage: $(x-1) - x = \text{wildlife use requirement}$.

(b) If the number of acres in the tract of land is equal to or greater than the number of acres in the tract of land on January 1 of the preceding tax year, the tract of land is not subject to the wildlife use requirement.

(c) If the number of acres in the tract of land is fewer than the number of acres in the tract of land on January 1 of the preceding tax year, the wildlife use requirement the tract of land must meet to qualify for agricultural appraisal based on wildlife management use shall be selected by the chief appraiser, with the advice and consent of the Appraisal District Board of Directors, from the wildlife use requirement ranges specified for the wildlife use appraisal region in which the tract of land is located as follows:

- (1) Trans Pecos Region--at least 97% but not more than 99%.
- (2) High Plains Region--at least 96% but not more than 98%.
- (3) Rolling Plains Region--at least 96% but not more than 98%.
- (4) Edwards Plateau (Western) Region--at least 96% but not more than 98%.
- (5) Edwards Plateau (Eastern) Region--at least 93% but not more than 95%.
- (6) Cross Timbers and Prairies Region--at least 93% but not more than 95%.
- (7) Gulf Prairies and Marshes (Upper Coast) Region--at least 92% but not more than 94%.
- (8) Gulf Prairies and Marshes (Lower Coast) Region--at least 96% but not more than 98%.
- (9) Post Oak Savannah Region--at least 92%but not more than 94%.
- (10) Blackland Prairie Region--at least 92% but not more than 94%.
- (11) Pineywoods Region--at least 92% but not more than 94%.
- (12) South Texas Plains Region--at least 96% but not more than 98%.

(d) The wildlife management use requirement that applies to a tract of land located in a wildlife management property association shall be selected by the chief appraiser, with the advice and consent of the Appraisal District Board of Directors, for the wildlife use appraisal region in which the tract of land is located as follows:

- (1) Trans Pecos Region--at least 95% but not more than 96%.
- (2) High Plains Region--at least 94% but not more than 96%.
- (3) Rolling Plains Region--at least 94% but not more than 95%.
- (4) Edwards Plateau (Western) Region--at least 94% but not more than 95%.
- (5) Edwards Plateau (Eastern) Region--at least 91% but not more than 92%.

(6) Cross Timbers and Prairies Region--at least 91% but not more than 92%.

(7) Gulf Prairies and Marshes (Upper Coast) Region--at least 90% but not more than 91%.

(8) Gulf Prairies and Marshes (Lower Coast) Region--at least 94% but not more than 95%.

(9) Post Oak Savannah Region--at least 90% but not more than 91%.

(10) Blackland Prairie--at least 90% but not more than 91%.

(11) Pineywoods Region--at least 90% but not more than 91%.

(12) South Texas Plains Region--at least 94% but not more than 95%.

(e) If the tract of land is located in an area designated by Texas Parks and Wildlife Department as habitat for endangered species, a threatened species, or a candidate species for listing as threatened or endangered, the wildlife use requirement for a tract of land to qualify for agricultural appraisal based on wildlife management use shall be selected by the chief appraiser, with the advice and consent of the Appraisal District Board of Directors, from the wildlife use requirement ranges specified for the wildlife use appraisal region in which the tract of land is located as follows:

- (1) Trans Pecos Region--at least 95% but not more than 96%.
- (2) High Plains Region--at least 94% but not more than 96%.
- (3) Rolling Plains Region--at least 94% but not more than 95%.
- (4) Edwards Plateau (Western) Region--at least 94% but not more than 95%.
- (5) Edwards Plateau (Eastern) Region--at least 91% but not more than 92%.
- (6) Cross Timbers and Prairies Region--at least 91% but not more than 92%.
- (7) Gulf Prairies and Marshes (Upper Coast) Region--at least 90% but not more than 91%.
- (8) Gulf Prairies and Marshes (Lower Coast) Region--at least 94% but not more than 95%.
- (9) Post Oak Savannah Region--at least 90% but not more than 91%.
- (10) Blackland Prairie Region--at least 90% but not more than 91%.
- (11) Pineywoods Region--at least 90% but not more than 91%.
- (12) South Texas Plains Region--at least 94% but not more than 95%.

(f) The wildlife management use requirements made by this section do not apply to a tract of land if:

(1) beginning with the tax year that began on January 1, 2002, the tract of land has continuously and without interruption qualified for agricultural appraisal based on wildlife management use; and

(2) the size of the tract of land, when measured in acres, is equal to or greater than, the size of the tract on January 1, 2002.

(g) The wildlife management use requirements set by this section do not apply to a tract of land located in Clay, McCulloch, or Terrell County that was qualified for agricultural appraisal based on wildlife management use in the tax year that began on January 1, 2008, if the size of the tract, when measured in acres, is equal to or greater than the size of the tract on January 1, 2008.

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 September 11, 2008.

TRD-200804930

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 26, 2008

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



SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4003

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

The Comptroller of Public Accounts proposes the repeal of §9.4003, regarding wildlife management use. The section will be replaced by a proposed new subchapter that establishes clearer standards for determining when land that is currently qualified for agricultural or productivity appraisal under Tax Code, Chapter 23, Subchapter D, is entitled to be qualified as agricultural land used for wildlife management for property tax purposes.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government, or individuals.

Mr. Heleman also has determined that for each year of the first five years, the public benefit anticipated as a result of enforcing the rule repeal would benefit the public through more consistent administration by county appraisal districts, and through greater understanding, by the public and appraisal district personnel, of the standards and requirements that must be met to convert qualified agricultural land to a wildlife management use that qualifies the land for wildlife management appraisal. The proposed rule repeal would have no significant fiscal impact on small businesses.

Comments on the proposed rules may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under Tax Code, §23.521, which requires that the comptroller adopt rules that set standards developed by Texas Parks and Wildlife Department with the comptroller's assistance.

The proposed repeal affects Tax Code, Chapter 23, Subchapter D.

§9.4003. *Wildlife Management Use.*

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 September 11, 2008.

TRD-200804926

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 26, 2008

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



WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

SUBCHAPTER K. ADDRESS CONFIDEN- TIALITY PROGRAM

1 TAC §§61.1055, 61.1070, 61.1075

Proposed new §§61.1055, 61.1070, 61.1075, published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2093), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 16, 2008.

TRD-200805049



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.55

Proposed new §25.55, published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1941), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 9, 2008.

TRD-200804876



CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §26.56

Proposed new §26.56, published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1946), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 9, 2008.

TRD-200804877



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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 254. POISON CONTROL CENTERS

1 TAC §254.1

The Commission on State Emergency Communications (CSEC) adopts amendments to §254.1, concerning operations and funding of Poison Control Centers (PCCs), without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4267).

CSEC and the Department of State Health Services (Department) are required by statute to jointly adopt rules regarding PCCs. The Department has adopted amendments to its rules regarding the PCCs (25 TAC §5.51 and §5.52). CSEC's §254.1 mirrors the intent and the language of the Department's rules.

No comments were received regarding the amendments to §254.1.

The amended rule is adopted under Texas Health and Safety Code, Chapter 777, §777.001(b) and §777.009(b), which require CSEC and the Department to jointly adopt rules regarding PCCs.

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 September 12, 2008.

TRD-200804963

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: October 2, 2008

Proposal publication date: May 30, 2008

For further information, please call: (512) 305-6930



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

The Texas Education Agency (TEA) adopts an amendment to §97.1004, concerning adequate yearly progress (AYP). The amendment is adopted without changes to the proposed text or guide as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5832) and will not be republished. The section establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The section also adopts the most recently published AYP guide. The amendment adopts applicable excerpts, *Sections II-V*, of the *2008 Adequate Yearly Progress Guide*.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state receiving Title I, Part A funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP guide.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. Through 19 TAC §97.1004, adopted effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. Portions of each AYP guide have been adopted beginning with the 2004 AYP Guide, and the intent is to annually update 19 TAC §97.1004 to refer to the most recently published AYP guide.

The adopted amendment to 19 TAC §97.1004 updates the rule to adopt applicable excerpts, *Sections II-V*, of the *2008 Adequate Yearly Progress Guide*. These excerpted sections describe specific features of the system, AYP measures and standards, and appeals. In 2008, the U.S. Department of Education (USDE) approved changes to specific components of the AYP system, including the areas addressed in the applicable excerpts of the 2008 AYP Guide. Examples of approved changes include approval of timeline for delayed release of preliminary AYP results, use of the TAKS-Modified test for assessing special education students on modified academic achievement standards, change to the federal cap process, clarification of Safe Harbor requirements, and the expiration of the November 30, 2005, flexibility agreement between Texas and USDE related to inclusion of students with disabilities in the calculation of AYP.

In addition, subsection (d) has been modified to specify that the AYP guide adopted for the school years prior to 2008-2009 will remain in effect with respect to those school years.

The TEA determined that the adopted amendment will have no direct adverse economic impact to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began July 25, 2008, and ended August 25, 2008. No public comments were received during the comment period.

The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The amendment implements the TEC, §§7.055(b)(32), 39.073, and 39.051(b).

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 September 10, 2008.

TRD-200804917

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: September 30, 2008

Proposal publication date: July 25, 2008

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



TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.1

The Texas State Board of Examiners of Psychologists adopts amendments to §469.1, Timeliness of Complaints, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4286).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State

Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on September 11, 2008.

TRD-200804940

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: October 1, 2008

Proposal publication date: May 30, 2008

For further information, please call: (512) 305-7706



22 TAC §469.2

The Texas State Board of Examiners of Psychologists adopts amendments to §469.2, Public Complaint Notification Statement, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4286).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on September 11, 2008.

TRD-200804941

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: October 1, 2008

Proposal publication date: May 30, 2008

For further information, please call: (512) 305-7706



22 TAC §469.3

The Texas State Board of Examiners of Psychologists adopts amendments to §469.3, Standardized Complaint Form, with changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4287).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

§469.3. *Standardized Complaint Form.*

(a) All complaints filed against a licensee must be submitted to the Board on the Board-approved standardized complaint form. The Board-approved complaint form can be obtained free of charge from the Board office or downloaded from the Board's web site.

(b) The Board shall make available to each person who wishes to file a complaint: the Board-approved complaint form, waiver form if appropriate, release of information forms, and the Rules and Regulations of the Board.

(c) The complaint form must be physically delivered to the Board office, mailed to the Board office, or faxed 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.

Filed with the Office of the Secretary of State on September 11, 2008.

TRD-200804942
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 1, 2008
Proposal publication date: May 30, 2008
For further information, please call: (512) 305-7706



22 TAC §469.4

The Texas State Board of Examiners of Psychologists adopts amendments to §469.4, Complaint Investigation, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4287).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on September 11, 2008.

TRD-200804943
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 1, 2008
Proposal publication date: May 30, 2008
For further information, please call: (512) 305-7706



22 TAC §469.5

The Texas State Board of Examiners of Psychologists adopts amendments to §469.5, Complaint Disposition, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4288).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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

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Sherry L. Lee
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22 TAC §469.6

The Texas State Board of Examiners of Psychologists adopts amendments to §469.6, Temporary Suspension of a License, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4288).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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22 TAC §469.8

The Texas State Board of Examiners of Psychologists adopts amendments to §469.8, Rehabilitation Guidelines, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4289).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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22 TAC §469.11

The Texas State Board of Examiners of Psychologists adopts amendments to §469.11, Legal Actions Reported, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4289).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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22 TAC §469.12

The Texas State Board of Examiners of Psychologists adopts amendments to §469.12, Suspension of License for Failure to Pay Child Support, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4290).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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

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22 TAC §469.13

The Texas State Board of Examiners of Psychologists adopts amendments to §469.13, Non-Compliance with Continuing Education Requirements, without changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4290).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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

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

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22 TAC §469.14

The Texas State Board of Examiners of Psychologists adopts amendments to §469.14, Monitoring of License, with changes to the proposed text published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4291).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this

state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§469.14. *Monitoring of Licensees.*

(a) The Compliance Committee is responsible for monitoring licensees who are ordered by the Board to perform certain acts. The Compliance Committee ascertains that the licensee performs the required acts within the designated time period.

(b) The Compliance Committee is responsible for implementing the Board's preventative approach to enforcement of the Act and the Rules of the Board by identifying and monitoring licensees who represent a risk to the public.

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER A. PURPOSE AND GENERAL INFORMATION

30 TAC §328.4

The Texas Commission on Environmental Quality (commission or TCEQ) adopts an amendment to §328.4 *with changes* to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2800) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 2541, 80th Legislature, Regular Session, 2007 requires the commission to establish rules regarding the size, characteristics, and fire safety features for non-permitted and non-registered municipal solid waste (MSW) recycling facilities that store combustible materials to produce compost or mulch and are located in certain counties that have areas designated as recharge or transition zones of a sole source aquifer and that have a population of more than 1.3 million. This bill also requires more stringent standards for facilities located over sole source aquifers. At present, Bexar County is the only county that satisfies the population and aquifer qualifiers contained within HB 2541. The effective date of the legislation was September 1, 2007. The bill further stipulates that rules implementing the requirements for these MSW recycling facilities must not become effective until the first anniversary of the adoption date of the

new rules. The commission is implementing the specific rule requirements of HB 2541, which address the rather unique environmental setting of Bexar County. These requirements are not applicable to other counties.

SECTION DISCUSSION

The commission adopts administrative changes throughout the rule to insert and update cross-references.

The commission adopts changes to cross-references in §328.4(a), (c), (d), and (f) to update chapter citations due to reorganization that occurred during a previous rulemaking.

The commission adopts an amendment to §328.4(a) to include cross-references to 30 TAC Chapter 330, Municipal Solid Waste, and Chapter 332, Composting, to mirror the references contained in those chapters. These changes are administrative, intended to improve the use and readability of this section.

The commission adopts §328.4(g) to implement the requirements of Texas Health and Safety Code (THSC), §361.1191, Regulation of Certain Recycling Facilities in Certain Counties, as established by HB 2541 for Bexar County. This statutory change took effect September 1, 2007 and applies only to MSW recycling facilities that are not required to have permits or registrations; that store combustible materials to produce mulch or compost; and that are located in certain counties. These counties must have a population of more than 1.3 million and include areas designated as recharge or transition zones of an aquifer as defined under the commission's Edwards Aquifer Protection Program that is the sole or principle source of drinking water for an area under Section 1424(e), Safe Drinking Water Act of 1974 (42 United States Code, Section 300h-3(e)) and is designated by the United States Environmental Protection Agency (EPA) as the Edwards Underground Reservoir under 40 Federal Register (FR) 58344. The referenced EPA designation, published December 16, 1975, was only for areas found within Medina, Bexar, and Comal Counties. Of the three counties designated in 1975, only Bexar County has a present population greater than 1.3 million persons and is the only county presently affected by the new legislation. Travis County is not potentially affected by this legislation because the Austin Area Edwards Aquifer was designated as a sole source of drinking water by the EPA on June 7, 1988 (53 FR 20897). As a result, Travis County is not within the 1975 designation. There are no applicable existing federal regulations. Municipalities, Bexar County, state and federal agencies, and persons affiliated with an MSW disposal permit who operate mulch and compost facilities located within Bexar County which were previously exempt from storage and processing limitations, recordkeeping, and reporting, will now be subject to these requirements.

The commission adopts §328.4(g)(1) to establish a storage time limit applicable to combustible material at the facility as required by HB 2541. Since proposal, the commission has revised the basis for at least 90% of the material to be removed from the facility to be by weight or by volume in response to comments. If a volume-based demonstration is used, the owner or operator will specify in the notice of intent (NOI) to operate the facility an appropriate conversion factor to convert volumes of incoming material to equivalent volumes of outgoing material. The commission changed from proposal, material must leave the facility during each subsequent 12-month period. This was also in response to comments. The material removal requirement is intended to prevent sham recycling operations where profits are made primarily from money received on the incoming material in

conjunction with an overall gross accumulation of material. The 90% removal requirement is intended to provide flexibility in facility operations to allow for slight seasonal or annual variations in the demand of recycled material. The 90% removal requirement can be documented by the owner or operator through such means as sales receipts of material purchased from the facility or shipping invoices for material leaving the facility. Since proposal, the commission has made a change in response to comments to allow owners or operators of composting processes that take longer than 12 months to request an alternative compliance period of more than 12 months from the initial accumulation of material. These requests for additional time to accumulate and process material will be made as part of the NOI to operate the facility and will include a technical justification as well as any supporting information for the additional time.

The commission adopts §328.4(g)(2) to establish a maximum volume of combustible material to be stored at the facility as required by HB 2541. The maximum storage volume limitation will be established by the most current NOI to operate the facility. The storage limitation will apply to both processed and unprocessed combustible material.

The commission adopts §328.4(g)(3) to require combustible material stored by the facility to produce mulch or compost be ground so that 100% has a particle size of six inches or less in at least one dimension and 90% has a particle size of six inches or less in all dimensions no later than 90 days after receipt. The commission revised this paragraph from proposal to allow for some material to be less than six inches in at least one dimension in response to comments about typical grinding operations. While processed material is also combustible, unprocessed brush at mulch and compost sites represents the most immediate fire risk. Ground material is more likely to smolder in a confined manner and can more easily be doused with water or cut away from a pile to prevent further spread of the fire. The commission adopts an allowance for an owner or operator to request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material, if conditions warrant. There may be limited circumstances, such as the initial startup of a facility or an equipment malfunction, where it is not practical to grind materials within 90 days of receipt. This would allow the executive director to grant an extension to the processing time limit.

The commission adopts §328.4(g)(4) to establish individual pile size limits for combustible materials as required by HB 2541. The commission adopts the requirements that each pile shall not exceed 25 feet in height; that unprocessed combustible material shall not cover an area greater than 50,000 square feet at the facility, with no single pile exceeding 8,000 square feet; and that a pile of processed combustible material shall not cover an area greater than 25,000 square feet. The adopted height requirement for all piles is consistent with commission guidance on cotton gin trash and Chapter 19, Section 1908 of the International Fire Code (IFC). The adopted maximum individual pile size area for unprocessed combustible material would limit the amount of material that could be engulfed in flames and is consistent with the requirements of §328.61, Design Requirements for Scrap Tire Storage Site. The 25,000 square feet limitation for processed material is consistent with the IFC, except that the footprint of the pile was adjusted downward since internal pile temperature monitoring, automatic sprinkler systems, and portable fire extinguisher requirements of the IFC are not included in this rule requirement. The maximum individual pile size area for processed material would limit the impact of a smoldering fire to a

manageable pile size and is consistent with commission guidance on cotton gin trash.

The commission adopts §328.4(g)(5) to establish a limit on the number of piles of combustible materials at a facility, as required by HB 2541. The commission adopts the requirement that the number of piles shall not exceed the maximum number specified by the operator in the NOI to operate the facility.

The commission adopts §328.4(g)(6) to require fire lanes between piles of combustible material as required by HB 2541. The commission adopts a minimum separation of 40 feet from piles of unprocessed combustible materials. Since proposal, the commission revised the minimum separation between piles of processed material to be equal to the pile height between piles of processed materials in response to comments. The adopted rule allows narrower fire lanes adjacent to piles of processed materials since ground material is considered to represent a lesser fire risk than unprocessed brush. The commission adopts the requirement for an all-weather road which encircles the area used for processing and storage of combustible material. This all-weather road must have minimum 25-foot turning radii, be capable of accommodating firefighting vehicles during wet weather, and meet applicable local requirements and specifications. The commission further adopts the requirement that there be space between buildings and piles that are kept open at all times and maintained free of combustible material, rubbish, equipment, or other materials. The commission adopts an allowance that this distance may be increased as necessary to protect human health and safety upon coordination with the local fire marshal.

The commission adopts §328.4(g)(7) to require at least a 50-foot buffer zone between the facility boundary and areas receiving, processing, or storing material. This provision is intended to implement HB 2541 by prohibiting the receipt, storage, and processing of brush, mulch, and compost within 50 feet of a residence, school, or church. This adoption is consistent with the set back distances required by §332.8, Air Quality Requirements, applicable to mulch and compost facilities.

The commission adopts §328.4(g)(8) to require a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. HB 2541 requires more stringent standards for facilities located over the recharge or transition zone of the Edwards Aquifer. The commission adopts the requirement for this plan to be consistent with the requirements for plans under 30 TAC §213.5(b) concerning the Edwards Aquifer.

The commission adopts §328.4(g)(9) to require the owner or operator to file, by the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, an NOI in accordance with §328.5(b) that includes provisions to demonstrate compliance with this subsection. Based on comments received, the commission revised this paragraph from proposal to require a revised NOI to be filed with the executive director before an owner or operator revises a volume conversion factor used when demonstrating compliance with the 90% removal requirement of material accumulated at a facility at the beginning of a 12-month period. A revised NOI to operate a facility must also be filed before a facility exceeds the maximum amount of material specified to be stored in an existing NOI. These provisions make it clear what actions are required and by when, thereby allowing for improvements to the inspection and enforcement processes.

The commission adopts §328.4(g)(10) to require an owner or operator of a facility subject to the requirements of this subsection

to maintain all records necessary to demonstrate compliance with this subsection. This provision makes it clear that records are required that will improve the inspection and enforcement process.

The commission adopts §328.4(g)(11) to enhance enforceability by stating that failure to operate and maintain a facility as proposed in the current NOI for the facility is a violation of this chapter. This provision makes it clear that storage of processed or unprocessed material in excess of the maximum volume of material or the maximum number of piles specified in the current NOI is a violation and therefore will improve the inspection and enforcement process.

The commission adopts §328.4(g)(12) to establish that the rule does not become effective until the first anniversary of the date on which the rule was adopted, as required by HB 2541.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it is not a "major environmental rule" and it does not meet any of the four criteria listed in the statute. A "major environmental rule" means 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 adoption meets the first part of the definition to be considered a "major environmental rule" because it is intended to protect the environment and reduce risk to human health from environmental exposure. The adoption is intended to implement HB 2541, 80th Legislature, 2007, for certain counties. The provisions that are adopted to establish annual storage time limits, the maximum volume that can be stored at a facility, size limits for individual piles of combustible material, a requirement for fire lanes between piles of combustible materials, set back distances from a facility's boundary, and recordkeeping requirements; and also require a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. These provisions will apply to some facilities that are currently exempt from this subchapter under THSC, §361.119 and 30 TAC §328.4(a) and §328.5(a). Adverse fiscal implications are anticipated for small or micro-businesses in Bexar County as a result of the adopted rule. There may be as many as three businesses that may have to reduce pile size, expand fire lanes, or increase recordkeeping practices as a result of the adopted rule. Because these adverse fiscal implications will only apply to a limited number of facilities in certain counties, the adoption is not expected to 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. The adopted rule does not meet the definition of a "major environmental" rule because it is not expected to 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.

Furthermore, a regulatory impact analysis is not required, because the adopted rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule adopted by an agency, the

result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rule does not meet any of these applicability requirements. First, there are no standards set for these facilities by federal law and the adoption is specifically required by HB 2541, 80th Legislature, 2007. Second, the adopted rule does not exceed an express requirement of state law. THSC, §361.119 and §361.1191 authorize the commission to regulate recycling facilities, but there are no specific statutory requirements for recycling facilities that are exceeded by the adopted rule. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; §361.119, which authorizes the commission to adopt rules to regulate recycling facilities as solid waste facilities; and §361.1191, which authorizes the commission to adopt rules addressing specific criteria for recycling facilities in certain counties. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination. The commission received no comments regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the rulemaking action under Texas Government Code, Chapter 2007. The specific intent of this rulemaking is to ensure that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The adoption implements a portion of HB 2541, 80th Legislature, 2007, which requires the commission to establish rules regarding the size, fire safety features, and other design and operational standards for certain types of MSW recycling facilities in certain counties. The adopted rule implements the provisions of the legislation for Bexar County.

The adopted provisions for Bexar County establish: annual storage time limits, the maximum volume that can be stored at a facility, limits for individual piles of combustible material, requirements for fire lanes between piles of combustible materials, buffer zones, recordkeeping requirements, and requirements for a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. The adopted rule is intended to reduce the likelihood of large unmanageable fires at mulching and compost facilities and protect water resources in Bexar County.

The adopted rule substantially advances these purposes by amending specific provisions in Chapter 328. The adopted rule provides a benefit to society by protecting the environment, public health, and safety. The provisions relate to reporting and operational requirements for recycling facilities and do not impose a burden on a recognized real property interest and, therefore, do not constitute a taking.

The promulgation of the adopted rule is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rule does not affect a landowner's rights in a recognized private real property interest because this rule-making neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking, nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rule. Therefore, the adopted rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program. The commission received no comments regarding the consistency of the rule with the Coastal Management Program.

PUBLIC COMMENT

The TCEQ held a public hearing April 28, 2008, and the comment period closed May 5, 2008. The commission received oral comments from: The City of San Antonio, Geosource Inc. (Geosource), the Living Earth Technology Group, L.L.C. (LETCO), and Quality Organic dba Texas Hill Country Landscaping, Inc. (Quality Organic).

The commission received written comments from: Austin Wood Recycling/Austin Land Service (AWR/ALS), CIC Environmental (CIC), the City of Brownwood, the City of San Antonio, Eggenmeyer Land Clearing, L.L.C., the Lone Star Chapter of the Solid Waste Association of North America (TxSWANA), Nature's Way Resources (Nature's Way), Risa Fisher & Associates, Inc. (Fisher), Silver Creek Materials Recycling and Compost (Silver Creek), LETCO, Texas Landfill Management, L.L.C. (TLM), and The Woodlands Grass Roots Environmental Education Network (TWG), and one individual.

Commenters either opposed portions of the rulemaking, supported the rulemaking with suggested changes, or supported portions of the rulemaking. Comments received during the formal comment period are addressed as follows.

RESPONSE TO COMMENTS

General Comments

Comment

AWR/ALS supported regulating sham recyclers without hurting legitimate businesses but stated that the rule has detrimental ramifications for legitimate businesses. LETCO stated that this rule should be written in a way that does not create financial hardships or operational standards that cannot be obtained by

legitimate operators. AWR/ALS, TLM, and TWG stated that the rule significantly increases the costs to legitimate compost operators.

Nature's Way and TWG commented that the rule will harm the composting industry in Texas for many reasons and will not accomplish the intended goals. Nature's Way and TWG stated that the rule as proposed is only attacking symptoms and not the real problems, that profitability will be harder and therefore would encourage more illegal operations with lower quality products, and that legal operations will be forced to close as they shift from marginal profitability to not being profitable due to increased operating costs.

TLM stated that brush pile fires can be avoided by enforcing the existing rules that limit the storage of recyclable materials and prohibit conditions which endanger human health or the environment. TLM further stated that this new rule will not generate any benefit without proper enforcement and that the perceived problem would not exist if current rules were enforced. TLM urged the commission to diligently pursue sham recycling facilities before another avoidable problem situation erupts which would lead to additional commission actions that further hurt legitimate recyclers.

Geosource commented that the commission should focus less on penalizing operators and more on compliance assistance.

Response

The commission appreciates these comments. The commission intends for the adopted limitations on combustible materials at mulch and compost facilities within Bexar County to primarily satisfy the commission's legislative mandate to address fire prevention over sensitive aquifers within Bexar County. Additionally, the commission intends that these requirements may further help inspectors and enforcement officials distinguish between sham and legitimate operations. The adopted requirements for owner or operator notification, processing to a specified standard within a reasonable time frame, and material removal from a mulch or compost facility should further contrast sham operations where profits are made primarily from money received on the incoming material in conjunction with an overall gross accumulation of material as compared to legitimate operators whose economic viability depends on the sale of finished material. The commission recognizes that legitimate operators will tend to manage incoming brush as soon as practicable and that these operators will consider in-process and processed material to be valuable commodities requiring protection from losses due to mismanagement or fire. The commission further expects that legitimate operators will use prudent measures to adequately train staff; maintain necessary safety and fire control equipment; and employ best management operating practices such as temperature monitoring and moisture content control to safeguard incoming, in-process, and processed material even though these actions are not within the adopted requirements.

The commission encourages concerned persons to lodge complaints of suspected environmental violations through a toll-free hotline, (888) 777-3186, or by directly contacting the local TCEQ Region Office. All complaints will be investigated by commission staff. The commission made no changes in response to these comments.

Comment

CIC commented that raw material such as brush can be considered combustible if an ignition source is available, but processed

and finished material that has been combined with soil and manure and kept in a moist state is not combustible. CIC suggested the commission provide a definition of combustible material. If defined in the rule, CIC stated that financial assurance should be based on combustible material storage and not processed or finished product. CIC also stated that processed or finished product can be sold at a discounted rate to be removed from the site and the owner should not have to include processed or finished products in the cost estimate for financial assurance.

Nature's Way commented that fires are caused by improper moisture management of the piles and not by pile size. Nature's Way suggested enforcing regulations for watering equipment on grinding operations for woody materials.

Silver Creek cited literature references which indicate that moisture is a crucial requirement for composting, that the critical moisture content range supporting spontaneous combustion is roughly 20% to 45%, that there is enough moisture available for evaporation to hold down temperatures at moisture contents above 45%, and that composting operations typically have moisture contents ranging from 50% to 60%. Silver Creek further stated that there are composting facilities that maintain high moisture contents well above 50% and that calling processed compost combustible material is simply not accurate. Silver Creek suggested that this rule should better define processed combustible material as containing less than 50% moisture. Silver Creek stated that any material having a moisture content of 50% and above should not be regulated from a fire standpoint.

Response

The commission concurs with the comments regarding moisture content but is not prepared at this time to mandate moisture content for mulch and compost activities that do not require a permit or registration. Mandating a moisture content would significantly increase a mulch or compost operator's expense to demonstrate compliance. The commission prefers that legitimate operators implement best management practices when processing material for mulch and compost and treat all inventories in a commodity-like manner. The commission expects that legitimate mulch and compost operators maintain appropriate moisture contents for all materials stored, in process, and for final product; ensure that ample water supplies exist both for moisture control and for fire fighting capability; train staff in proper fire fighting techniques; and provide and maintain all necessary equipment to quickly and effectively respond to a fire. The commission made no change in response to this comment.

The purpose of financial assurance is to cover third-party mobilization, operation, and disposition costs when material is abandoned. Mulch and compost is combustible if moisture content is not maintained. Since a desired or optimal moisture content cannot be assured at abandonment, the commission made no change relating to defining combustible material in terms of moisture content or relating to excluding material with moisture contents of 50% or greater from the financial assurance requirements for combustible material when stored outdoors.

Comment

CIC requested that the commission provide a mulch or compost checklist with yes, no, or N/A answers such as the permit by rule air checklists, that this will help industry understand the conditions that must be met in order to comply with the rule.

Response

The commission has developed TCEQ Publication RG-410, Requirements for Nonhazardous Recycling and Composting Facilities, and a guidance document entitled "Guidelines for Complying with Financial Assurance Requirements for Recycling, Composting, and Mulching Facilities." These documents, and additional resources, are available on the TCEQ web page "Composting and Mulching: Am I Regulated," online at http://www.tceq.state.tx.us/permitting/waste_permits/msw_permits/MSW_amlregulatedcomposting.html. The commission made no change in response to this comment.

Comment

CIC requested the commission provide a sample fire prevention and suppression plan for industry to use as a guide to help standardize the plan and provide guidance for industry and inspectors.

Response

Both the enabling legislation and the adopted rule contain components that contribute to overall fire safety; however, the commission suggests that fire prevention and suppression plans are more appropriately developed through coordination with state and local fire control officials. The commission made no change in response to this comment.

Comment

Geosource asked at what point the commission would take over firefighting responsibilities from local fire fighters.

Response

The commission does not intend to take over firefighting responsibilities where an owner or operator or a local firefighting authority are providing an adequate response. The commission would consider taking the lead responding to a fire based on the ability of local firefighters to respond and the financial resources available to the commission at the time. The commission made no change in response to this comment.

Comment

Eggemeyer Land Clearing, L.L.C. stated that they have multiple grinders in and around the San Antonio area; that the fair market price for grinding in San Antonio ranges from \$1.25 to \$2.00 per cubic yard depending on the size of any debris and how clean the debris is as far as rock, dirt, and concrete; and that the cost for disposal of the grindings is approximately \$2.50 per cubic yard, of which \$2.00 per cubic yard is for trucking and \$0.50 per cubic yard is for loading.

Response

The commission appreciates this information.

Section 328.4(g).

Comment

The City of San Antonio, while noting that HB 2541 was targeted only at Bexar County, stated that the rule should apply to all Texas counties. The city states that a mulch fire can occur anywhere, does not understand why the rule should be applicable only to Bexar County, and stated that the rule would have more benefit to rural areas that may not have adequate fire fighting resources in a county with a population less than 1.3 million people.

Geosource stated that several counties such as Comal County and Kendall County have sole source aquifers. Geosource did

not understand why Travis County should be exempted and suggested that there be a level playing field. Geosource stated that Bexar County mulch and compost facilities will bear a burden that facilities located in other counties and municipalities will not have to bear.

AWR/ALS has an imminent concern that these regulations may be adopted statewide and stated that there is no need to adopt this legislation statewide.

The City of Brownwood stated that regulators in the West Central Texas area have discussed publicly their desire to implement whatever rule comes out of the rulemaking process of HB 2541. The City of Brownwood agreed that while the rule does need to be updated, the rule should be based on the size and location of the facility rather than a one size fits all approach.

LETCO, Nature's Way, Silver Creek, and TWG expressed concern that, although the rule is intended to be limited to Bexar County, other cities and counties may adopt this rule at some point. LETCO stated that its facility's capacity will be cut in half if the rule as proposed goes statewide. LETCO stated that this would result in LETCO being noncompliant and having to cancel large contracts. LETCO stated that facilities similar to theirs that are within cities are typically land locked and that the price of adjacent land, if available, would be hundreds of thousands of dollars per acre. LETCO stated that locations within cities are crucial to recycling success due to increased transportation and fuel costs associated with an outlying facility.

TLM stated that this rule is not necessary to address problem facilities and therefore urges the commission to forever limit this rule to Bexar County.

Response

HB 2541 and this adopted rulemaking are applicable only to the unique situation in Bexar County. Actions taken by other Texas cities and counties are beyond the scope of this rule and are not controlled by the commission. The commission made no changes in response to these comments.

Comment

The City of San Antonio and Geosource sought clarification as to whether local governments remained exempt from the entire chapter or whether local governments are exempt from certain parts of the chapter such as financial assurance, registration, and reporting.

Response

Presently, local governments are exempt from §328.4, Limitations on Storage of Recyclable Materials, and §328.5, Reporting and Recordkeeping Requirements, but are subject to the remaining requirements of Chapter 328. HB 2541 did not exempt local governments within Bexar County from the adopted requirements located in §328.4(g) relating to storage, recordkeeping, and reporting. Therefore, local governments within Bexar County are only subject to the storage limitations of §328.4(g) and the registration and recordkeeping requirements of §328.4(g) and §328.5(b). The commission made no change in response to this comment.

Comment

Geosource requested clarification as to the applicability of the proposed rule to material production yards and retailers. Geosource stated that production yards transfer processed material to sales yards. Sales yards sell retail and wholesale

and may also perform some processing as well. Geosource also suggested a fixed financial assurance requirement, \$1,000,000 for example, for all mulch and compost facilities.

Response

Recycling facilities that store and process combustible materials to produce mulch and compost in Bexar County are subject to these adopted regulations. After material processing has been completed and transferred to another facility, a facility that performs no processing of recyclable materials but is only involved in the sale of the materials is not a recycling facility and therefore is not subject to these adopted regulations. Recycling facilities outside of Bexar County are not subject to the adopted regulations. A \$1,000,000 fixed financial assurance amount would certainly be easier to implement but may not be protective or appropriate for all facilities. Variations in facility size and location do not support imposing a one size fits all flat rate financial assurance amount for third-party closure of the facility. The commission made no changes in response to these comments.

Comment

AWR/ALS stated that fire protection in Harris and Travis County is based on the IFC. AWR/ALS suggested that the proposed rule take into account exceptions based on sales of mulch, fire fighting capabilities, and local fire officials.

Response

Mulch sales by a recycling facility are a way of demonstrating compliance with existing §328.4 that materials are recyclable with an economically feasible means of being recycled. Additionally, facilities that are not presently exempt from the requirements of §328.5 are required to have a fire prevention and suppression plan available for review and coordination with local fire control officials. The commission made no change in response to this comment.

Comment

Geosource commented that counties are exempted from many of the requirements that private business must follow relating to mulch and compost. Geosource further stated that the Alamo Area Council of Governments gives money to these counties to buy grinders in competition with private business, creating a double standard.

Response

The commission appreciates these comments and has forwarded them to the TCEQ Regional Solid Waste Grants Program so they can bring these comments to the attention of the Solid Waste Advisory Committee of the Alamo Area Council of Governments. Projects approved and funded by a regional Council of Governments must promote cooperation between public and private entities, provide services not readily available, and must not create a competitive advantage over a private industry that provides recycling or solid waste services. The exemptions for local governments contained in existing §328.4 and §328.5 implement existing statutory exemptions which the commission does not have authority to change. The commission made no change in response to this comment.

Section 328.4(g)(1). Storage time limits of all material.

Comment

Geosource stated that since some of these facilities receive gravel and soil in addition to mulch that the annual storage limits refer only to mulch and compost and not to all materials.

Geosource recommends using the submitted NOI as a ceiling on the amount of material that may be stored at a facility.

Response

Soil and gravel are not usually considered recyclable materials and so would not be subject to the terms and conditions of §328.4, pertaining to storage limitations of recyclable materials. The commission revised this paragraph to refer to the removal of combustible material from the facility, consistent with the additional requirements of this adopted subsection.

Comment

Nature's Way and TMG stated that some composting techniques require over three years in order to adequately treat residual herbicides found within feed stocks, or to fully decompose certain conifer and juniper feed stocks that naturally contain turpentine, terpenes, rosins, phenolics, and waxes; while composted mulch operations may only require nine to 12 months depending on the sales season. Nature's Way suggested placing time limits only on woody mulch products, not compost.

Response

Acknowledging that many mulch products may undergo some amount of biological degradation prior to sale, the definitions of compost and mulch in Chapter 332 are not sufficiently distinct for the exempt and notification tiers established within Chapter 332 to allow for different time limitations based on material type. The commission acknowledges that some composting processes can take longer than the time allowed by this rule amendment, but these storage limits are necessary to prevent sham recyclers from creating a fire hazard. Therefore, the commission revised this paragraph to allow owners or operators of composting processes that take longer than 12 months to request a compliance period for more than 12 months from the initial accumulation of material, to have these requests for additional time to accumulate and process material be made part of the NOI to operate a facility, and to have owners or operators include a technical justification as well as any supporting information for the additional time as part of the submitted NOI to operate a facility.

Comment

CIC, Geosource, LETCO, and Silver Creek stated that a 90% removal by weight basis would require the purchase and installation of scales and that most materials are received, recorded, and sold by the cubic yard and not by weight.

Geosource stated that requiring removal by a weight basis brings in moisture content as a factor and that feed stock weights vary. LETCO stated that materials are much heavier when finished due to added moisture and so a weight basis is not a reasonable way to measure turn-over. Silver Creek noted that the varying degrees of moisture content from the woody feedstock to the final compost can greatly affect weight and may lead to compliance difficulties with this subsection. Fisher and TxSWANA commented that while most operations typically sell their product within a year, documenting 90% removal will be difficult at best and subject to misinterpretation.

Fisher, Silver Creek, and TxSWANA stated that composting is a seasonal operation in most climates with the amount of feedstock accepted and the amount of product produced varying tremendously during the course of a year, that the composting process often entails repeatedly combining piles or windrows during processing to optimize site usage, and that the final prod-

uct of a properly run compost operation is reduced dramatically in both weight and volume through the course of processing. Silver Creek stated that the resulting compost product does not resemble the starting feedstock either physically or chemically. Fisher stated that tracking a given quantity of material for one year from the time it enters the site until it leaves is impossible and that trying to correlate feedstock-in to product-out one year later is meaningless due to seasonality. TxSWANA stated that tracking the material in a clearly reportable fashion may be quite complicated to the precision required of a 90% turnaround rule.

CIC recommended that the 90% material removal requirement be on a weight or volume basis. CIC suggested that the owner or operator be required to provide records documenting compliance with the subsection to ensure the facility is meeting the 90% limit and can handle an increase in raw material.

Fisher, LETCO, and TxSWANA suggested that the storage time limit for all material be revised to require at least 50% by weight or volume of all materials present on-site as of a specified annual anniversary date be removed from the site during the one-year period following that date. Fisher and TxSWANA suggested that if a volume-based calculation is used, that an appropriate conversion factor be applied to convert volumes of unprocessed material to equivalent volumes of processed material with the approval of the executive director.

Geosource stated that grinding of loose brush results in a 40% reduction in volume and that composting results in an additional 20% volume reduction of the incoming material. Silver Creek stated that grinding reduces volume at a ratio of about 3:1, with composting providing a further reduction of both volume and mass of 50%. Silver Creek stated that with all these changes, it did not know how the proposed 90% by weight removal could be quantified.

The City of Brownwood did not oppose an annual storage time limit, but stated that the 90% removal of all materials annually poses an undue burden on small municipal operators due to the low population density of West Texas. The City of Brownwood stated that municipal operators tend to give mulch away to residents and no records are kept since the material is free for the taking. The City of Brownwood suggested that 50% removal is sufficient to eliminate most fire hazards.

Response

The commission does not intend to require exempt and notification tier mulch and compost facilities to purchase and install weighing scales. The commission agrees that tracking material removal from a facility solely by a weight basis may prove difficult due to variations in material and moisture content. Additionally, tracking material removal from a facility using a volume basis alone will prove difficult due to the great volume reduction of material through grinding and composting. Comments have indicated that grinding brush to mulch may result in a 40% - 67% volume reduction, and that subsequent composting may result in an additional 20% - 50% volume reduction. In order to implement the requirement for removal of material from a facility, the commission revised §328.4(g)(1) to allow for annual material removal of 90% from the facility by weight or volume as documented through appropriate recordkeeping and an executive director approved conversion factor. The rule was also changed to specify that the amount required to be removed relates to the amount accumulated at the beginning of the period.

Comment

Fisher, Nature's Way, TWG, and TxSWANA further stated that the provision does not allow for sudden influxes of recyclable debris as a result of a disaster, such as after a tornado or a tropical storm, that require more than one year to process properly. Geosource requested clarification as to how quickly the commission would respond to requests from processing yards to increase capacity after disasters such as a hurricane or wind storm.

Response

The commission recognizes that the 90% turnover rate does not allow for sudden influxes of recyclable debris resulting from a disaster. When a disaster occurs, the Office of the Governor may issue a disaster declaration in response to the emergency. That declaration gives the commission enforcement discretion for any regulated activity which assists with the swift and effective response to the disaster. Each disaster presents unique circumstances for the commission as well as other local, state, and federal authorities to consider at the time of the event. Based on the actual disaster declaration, and the needs identified as a result of the disaster event, any special authorizations can then be granted more quickly than the time required for preparation, review, and approval of a written request for alternative compliance. The commission made no change in response to this comment.

Section 328.4(g)(2). Maximum volume of combustible material.

Comment

Fisher recommended no change to the proposed requirements relating to maximum volume of combustible material.

Response

The commission appreciates this comment.

Section 328.4(g)(3). Time limits for processing.

Comment

Nature's Way stated that a mid-sized grinder with a three-inch by five-inch internal sizing screen could grind over 90% of the wood chips to a six inch particle size or smaller but that some pieces might be 1/2 inch in diameter by 12 inches long, for example. Nature's Way stated that using a smaller internal sizing screen to ensure 100% of all wood chips are less than six inches in all dimensions would cut current grinding production in half, effectively doubling grinding costs. Nature's Way stated that the larger material is used as a bulking agent to ensure good airflow into compost piles. Nature's Way suggests the rule be revised to require 80% of the wood chips be ground to six-inch particle size or smaller so that the larger material could continue to be used as a bulking agent for proper pile construction and airflow.

Geosource commented that the incident that prompted this rule-making was a brush fire, not a mulch fire. Geosource stated that a double-ground wet mulch will not burn, but will smolder, will probably go out, or could be taken out with equipment and put out quickly; that single-ground mulch will smolder and maybe burn, could be taken out with a loader or excavator, and be put out with a small amount of water; and that brush will readily burn and will take a lot of water to put out. Geosource supported more regulation on brush piles than on mulch piles.

Response

The commission concurs that a typical medium sized grinder will not achieve 100% particle sizing in all dimensions less than six inches. It is the commission's opinion that a properly maintained

grinder will achieve 80% - 95% particle sizing to six inches after a first grind of the material. The commission acknowledges that owners or operators will usually employ subsequent grinding that will achieve even further size reduction. The commission intends to have owners and operators reduce the potential combustibility of incoming brush as well as change the character and nature of the potential fire hazard by grinding the material to a specified standard.

As noted by several commenters, grinding incoming brush and adding moisture to the resulting mulch fundamentally changes the potential fire hazard presented by the combustible material. Further grinding, processing, and maintenance of the mulch or using this material as a feedstock for composting further reduces the potential fire hazard of the material by changing the character and nature of the material's combustibility. The commission concurs that particle size reduction reduces the potential fire hazard and requires less subsequent effort to extinguish a fire outbreak. The commission concurs that further size reduction also changes how a fire can be extinguished and the type of equipment appropriate to manage such an outbreak. The commission agrees with the comments and revised the rule to require that 90% of the material be ground to six inches or less in all dimensions and 100% of the material be ground to six inches or less in at least one dimension. The main purpose of the adopted requirement is to have facility owners or operators grind brush to a reasonable particle size in order to fundamentally change the nature of a fire and reduce the potential fire hazard. This adopted standard will also further distinguish sham operations from legitimate mulch and compost facilities.

Comment

The City of Brownwood stated that it is not feasible for them to own a grinder due to the size of the city-owned grind site, so the city contracts with others to provide grinding services. The city stated that most, if not all, contract grinders are located east of the IH-35 corridor, must travel to provide services for West Texas, and typically request the city to have on hand 10,000 cubic yards or more of material prior to arrival. The city stated that they can accumulate 10,000 cubic yards of brush in five to six months and that asking the contractors to grind less than 10,000 cubic yards would drive the price up significantly or force the city to consider purchasing a grinder costing \$375,000 or more. The city stated that there can be no guarantee that the executive director will grant approval for an additional 180 days for grinding. The City of Brownwood proposed that this subsection be changed to allow for the accumulation of brush up to six months for small municipal sites.

Similarly, Fisher, LETCO, and TxSWANA stated that the 90-day limit is too short for small operations, start-up operations, and operations that depend on outside grinding contractors, especially during the non-growing season. LETCO stated that these operations can require more time than 90 days to collect enough material to economically grind or process.

The City of San Antonio commented that grinders are frequently out of service for repairs, that the type of equipment cannot be rented, and that the ability of a contractor to service a site immediately during down time is limited. The City of San Antonio requested the commission to consider variances based on reported equipment malfunctions, to be able to contact the local TCEQ Region Office to report an equipment malfunction and receive a temporary variance to the storage size and timeline requirements.

The City of San Antonio, Fisher, LETCO, and TxSWANA requested that the time limit to grind be increased from 90 days to no later than 180 days after receipt. Fisher and TxSWANA suggested that an owner or operator be allowed to request executive director approval for additional time under certain circumstances.

Nature's Way stated that incoming brush, limbs, and leaves should be ground at least weekly if not daily, that large stockpiles of unground material are difficult to manage, and that stockpiling of unground feed stock material should not be allowed. Nature's Way stated that feed stocks are easier to grind while green and moist and reduces the amount of dust produced. Nature's Way further stated that materials that dry out are harder to grind with resultant increased operating costs, become hydrophobic, and do not reabsorb moisture well. Nature's Way stated that existing regulations that allow six-month storage time for unground feedstock should be lessened to reduce the risk of fires.

Response

As noted in the previous response, the commission intends to have owners and operators reduce the potential combustibility of incoming brush as well as change the character and nature of the potential fire hazard by grinding the material to a specified standard. Several commenters stated that grinding incoming brush to a specified size and adding moisture to the resulting mulch fundamentally changes the potential fire hazard presented by combustible material. Several commenters noted that accumulated brush presents by far the greatest potential fire hazard, both in the magnitude of a potential fire and the amount and type of resources necessary to control such a fire. The commission determined that 90 days is a reasonable time for an owner or operator to process incoming brush to a specified particle size in order to reduce the potential fire hazard from accumulated brush. The adopted rule does allow an owner or operator the ability to request that the processing time be increased to 180 days when the additional time is supported by clear justification. The commission establishes by this adopted rule that grinding incoming brush to a specified size within a reasonable time frame addresses one of the most fundamental factors affecting the potential fire hazard posed by combustible material. This adopted standard will also further distinguish sham operations from legitimate mulch and compost facilities. The commission made no change in response to these comments.

Section 328.4(g)(4). Pile size limits.

Comment

An individual suggested that operators be allowed or encouraged to have a real time measurement and recording system that is connected to an alarm for compost pile temperature, and perhaps other indicators like moisture content, as an alternative approach to prescribed compost pile sizes. The individual mentioned that numerous studies indicate that the compost process is biologically active and constructive to about 70 to 80 degrees Centigrade (158 to 176 degrees Fahrenheit) and is dangerous when pile temperatures rise to 150 degrees Centigrade (302 degrees Fahrenheit). The individual noted that this is a dramatic temperature difference that is quite noticeable and could be used to activate automatic alarms. The individual commented that real-time measurements could be a means for a composter to build larger piles than those contemplated by the proposed rule that simply limits the height of the stack. The individual further commented that periodic reporting of the compost pile tempera-

ture measurements at a facility would provide the public with the assurance that the compost piles are safe.

The City of San Antonio suggested that alternative compliance be approved for facilities that have operational plans that describe additional fire protection measures that would support increasing storage time and pile size.

Response

HB 2541 requires the commission to limit the pile size of combustible material, including mulch and compost. By adopting this rule, the commission establishes that pile size is one of the most fundamental factors regarding the potential fire hazard posed by combustible material. This adopted standard will also further distinguish sham operations from legitimate mulch and compost facilities. Variances to the adopted requirements have potential merit but would require case-by-case consideration to establish reasonable but specific performance requirements that are beyond the scope of this rulemaking to operate under an NOI. The commission made no change in response to these comments.

Comment

The City of Brownwood commented that the pile size as proposed by the agency would contain approximately 7,400 cubic yards of material and that the proposed pile height of 25 feet would present a danger to employees building the piles and potentially to customers. The city recommended that materials be measured by cubic yards rather than square feet, that the pile height be limited to 15 feet, and that the base of the piles be extended to 125 feet by 150 feet. The city noted that this would provide a volume of 10,400 cubic yards, about 3,000 cubic yards more than the agency's proposal. The City of Brownwood also requested for continuity that all piles be the same size for processed and unprocessed materials.

The City of San Antonio commented that the proposed limitation of processed material pile size of 25,000 square feet would impose a hardship and suggested maximum processed material pile sizes of 55,000 to 75,000 square feet. Alternatively, the City of San Antonio suggested that if a pile is allowed to be 25 feet tall and have 25,000 square feet, to allow a 50,000 square foot pile at a maximum height of 14 feet as an example.

AWR/ALS commented that if mulch piles are limited to 25,000 square feet, operational efficiencies would decrease, the need for land would drastically increase, and this limitation would cost approximately \$3.00 per cubic yard.

Fisher and TxSWANA stated that the total amount of unprocessed combustible material should not be limited in terms of total area if this material is otherwise managed according to best management practices in terms of fire prevention and control, and that the proposed provision does not recognize the possibility that some sites may be large enough to maintain several smaller, appropriately spaced piles of brush, representing a very large combined footprint of all brush piles since economies of scale are significant in this industry. TxSWANA requested to delete the proposed wording regarding limitations on overall facility size, and encourage or allow larger, well-managed, and economically advantageous operations. Fisher and TxSWANA suggested the provision be revised to require that no single pile of processed or unprocessed combustible material shall cover an area exceeding 25,000 square feet, that at least one single dimension of any pile of processed or unprocessed combustible material must be no more than 100 feet in length to allow for access of equipment for operational as well as emergency man-

agement of the pile, and that the pile size limitations may be exceeded if authorized in writing by the executive director as supported by the recommendation of the local fire marshal.

LETCO commented that the 25,000 square foot pile size came from a document titled "Proper Storage of Cotton Gin Trash" and is irrelevant to this proposed rule. LETCO states that no one in Texas is composting cotton gin trash in large static piles. LETCO stated that brush is much less likely to catch fire than cotton trash. LETCO stated that pile sizes should be larger to allow for future contracts to recycle large amounts of brush per year. LETCO recommended the pile size for unprocessed material to be 20,000 square feet and 37,500 square feet for processed material, both with 25-foot pile height limits.

Response

HB 2541 requires the commission to limit the pile size of combustible material, including mulch and compost. The legislation further requires the commission to impose different standards appropriate to the size and number of piles of combustible materials to be stored at the facility. The commission has chosen to limit pile heights and pile areas for incoming and processed material to establish performance standards that are easily observable to verify compliance with the limits. The commission establishes by this adopted rule that pile size is one of the most fundamental factors regarding potential fire hazard posed by combustible material. This adopted standard will also further distinguish sham operations from legitimate mulch and compost facilities. As previously stated in the Section Discussion, the adopted maximum individual pile size area for unprocessed combustible material limits the amount of material that could be engulfed in flames and is consistent with the requirements of §328.61, Design Requirements for Scrap Tire Storage Site. The 25,000 square feet limitation for processed material is consistent with the IFC, except that the footprint of the pile was adjusted downward since internal pile temperature monitoring, automatic sprinkler systems, and portable fire extinguisher requirements of the IFC are not included in this adoption. The maximum individual pile size area for processed material would limit the impact of a smoldering fire to a manageable pile size and is consistent with commission guidance on cotton gin trash. The commission made no changes in response to these comments.

Section 328.4(g)(5). Number of piles.

Comment

CIC stated that there should be some flexibility added to this subsection to allow a facility to expand. CIC suggested the subsection be revised to allow the owner or operator to notify the commission in writing within ten days of increasing the number of piles.

Response

The commission does not agree with the concept that a change to an NOI be offered after a facility has exceeded its maximum capacity. The commission envisions that a facility's submitted NOI would include some additional potential capacity to allow for operational flexibility. After-the-fact submittals of NOIs are problematic from an administrative and compliance perspective. The commission made no change in response to these comments.

Comment

Fisher recommended no change to the proposed requirements relating to maximum number of piles at a facility.

LETCO states a facility should be able to have as many piles on-site as needed as long as set-back, height, and spacing requirements are met.

Response

The enabling legislation requires the commission to limit the amount of combustible material that may be stored and to impose standards relating to the number of piles of combustible material. The commission made no change in response to these comments.

Section 328.4(g)(6). Fire lanes between piles.

Comment

The City of Brownwood stated that a 20-foot fire lane is not adequate for most fire vehicles to safely pass through or to prevent fires from spreading from one pile to another during windy conditions. The city stated that the proposed all weather road will be destroyed with every grinding event, will have to be rebuilt afterward at significant cost, and that access would probably not be needed if the facility was muddy or if it was raining. The city proposed to simplify the subsection to require firm and passable lanes in most weather conditions, and that all fire lanes are 40 feet wide.

LETCO recommended 20-foot pile separation distances and suggested that the windrow type of composting be addressed.

Nature's Way stated that access to piles of material for turning and watering requires at least 12 to 15 feet of separation for large front end loaders to have access and room to work, which provides enough room for fire trucks to reach piles.

Fisher and TxSWANA commented that the proposed requirements for fire lanes appear to be based on the need to access all parts of the site with fire fighting equipment, with additional width around unprocessed material. Fisher and TxSWANA stated that pumping water on a burning or smoldering pile is very often not the most effective means of fighting compost and mulch fires. Fisher and TxSWANA commented that the net effect of these unnecessarily wide proposed buffers and wider aisle-ways is the reduction of a site's cost-effectiveness and thus makes an otherwise well-managed operation infeasible. Fisher and TxSWANA stated that it is important to allow enough space between compost and mulch piles to allow heavy equipment such as loaders and dozers to isolate burning material to spread or relocate the material before it is then either smothered or doused with water. Fisher stated that a more appropriate approach is requiring a fire prevention plan that addresses clean aisle-ways wide enough to accommodate heavy equipment and maintaining clean, open areas adequate to spread burning material, among other requirements. Fisher and TxSWANA suggested the proposed provision be revised to require a minimum separation of 20 feet between piles of either processed or unprocessed materials; that there be a minimum separation of ten feet between actively managed compost windrows; that the open space between buildings and piles be open at all times, maintained free of combustible material, rubbish, equipment, or other materials; and that the distance may be increased, as necessary, to protect human health and safety upon coordination with the local fire marshal.

Silver Creek commented that their composting facility has static piles of compost averaging eight feet in height that can actually be driven upon. Silver Creek stated that to build an all-weather road and incorporate the 20-foot spacing between piles, with a maximum 25,000 square foot area pile limitation will cost a mini-

um of \$200,000 at their facility, and probably two to three times higher for other facilities.

Response

The commission determined from the comments that accessibility and fire control methods are relative to pile height for processed material and whether the material is managed in windrows or static piles. The commission notes that long thin windrows of processed material allow for burning material to be removed and isolated from the pile and quickly smothered or doused. The commission further notes that compost windrows typically may be eight to 12 feet high, whereas static piles may be up to 25 feet high. Noting that the pile configuration as well as the pile height affects fire fighting equipment and methods used in response to a fire, the commission revised the rule to require fire lanes between processed combustible material to be equal to or greater than the height of the piles. Unprocessed material must still have a minimum separation of 40 feet between piles.

Section 328.4(g)(7). Buffer zone.

Comment

Fisher suggested that the minimum 50-foot buffer zone distance be measured from the property boundary to piles of processed or unprocessed combustible materials, rather than to areas receiving, processing, or storing material.

Response

The buffer zone distance is consistent with the set back distance specified within §332.8, Air Quality Requirements. In order to not create a different or potentially conflicting buffer zone distance, the commission made no change in response to the comment.

Section 328.4(g)(8). Recharge Zone or Transition Zone.

Comment

Fisher recommended no change to the proposed requirements relating to the recharge or transition zone of the Edwards Aquifer.

Response

The commission appreciates the comment.

Section 328.4(g)(9). Notice of intent.

Comment

CIC stated there should be some flexibility to allow a facility to expand since the owners or operators of the facilities have no way to tell when their business is going to increase and it would be difficult for them to send the NOI prior to the increase. CIC suggested the subparagraph be revised to allow the facility to submit the NOI within ten days after the capacity increase.

Fisher recommended no change to the proposed requirements relating to submittal of an NOI.

Geosource sought clarification as to whether a submitted NOI requires a response from the commission and the time frame for any commission response.

Response

The commission does not agree with the concept that a change to an NOI be offered after a facility has exceeded its maximum capacity. If financial assurance is required, owners or operators of existing facilities must provide proof of financial assurance within 60 days of executive director approval of the revised closure cost estimate, as specified in §37.141, Increase in Current Cost Estimate. The commission envisions that a facility's sub-

mitted NOI would include some additional potential capacity to allow for operational flexibility. After-the-fact submittals of NOIs are problematic from an administrative and compliance perspective. Executive director's staff can typically review NOIs to determine whether the owner or operator has proposed to conduct facility operations according to required standards within 30 days of receipt. If determined to be acceptable, staff responds with a letter acknowledging the submitted notification and informing the owner or operator of an assigned identification number for the facility. The commission made no changes in response to these comments.

Section 328.4(g)(11). Compliance.

Comment

Fisher recommended no change to the proposed requirements relating to operating and maintaining the facility in accordance with the submitted NOI.

Response

The commission appreciates the comment.

Section 328.4(g)(12). Effective date.

Comment

The City of San Antonio supported the delayed effective date until at least one year after the commission adoption date to allow the city to properly budget for this mandate. The city stated that the new rule will have a large fiscal impact associated with increased capital costs of approximately \$300,000 as well as increased recurring operational costs of approximately \$190,000. The city also requested an October 1st effective date to coincide with many persons' fiscal years.

Fisher recommended no change to the proposed requirements relating to the effective date of this subsection.

Response

HB 2541 establishes the effective date of the adopted rule and does not allow an extension of the effective date. However, the commission changed from proposal the removal rate requirement specified in §328.4(g)(1) from an annual basis to a 12-month period basis to allow operators greater flexibility in demonstrating compliance with the material removal requirements from the facility.

STATUTORY AUTHORITY

The amendment is adopted under THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.119, which authorizes the commission to adopt rules to regulate recycling facilities as solid waste facilities; and THSC, §361.1191, which authorizes the commission to adopt rules addressing specific criteria for recycling facilities in certain counties.

The amendment implements THSC, §361.119, Regulation of Certain Facilities as Solid Waste Facilities, and THSC, §361.1191, Regulation of Certain Recycling Facilities in Certain Counties.

§328.4. Limitations on Storage of Recyclable Materials.

(a) The provisions of subsections (e) and (f) of this section are available to all recycling facilities. In accordance with §§330.11(e)(2), 332.3(d), and 332.23(5) of this title (relating to Notification Required; Applicability; and Operational Requirements), in order to be exempt from the registration and permit requirements under Chapter 330 of this title (relating to Municipal Solid Waste) or under Chapter 332 of this title (relating to Composting), a facility must comply with the requirements of this section unless:

(1) the owner or operator of the facility is a local government or an agency of the state or the federal government;

(2) the facility receives more than 50% of its recyclable material directly from any combination of generators not affiliated with the facility, from the public, or from haulers not affiliated with the facility; the facility receives no financial compensation to accept any of the recyclable material it receives; and the facility accumulating the recyclable material can show that the material is potentially recyclable and has an economically feasible means of being recycled; or

(3) the facility smelts recyclable metals or the facility is a secondary metals recycling facility affiliated with a smelter of recyclable metals, including the operations conducted and materials handled at the facility, provided that the owner or operator of the facility demonstrates that:

(A) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(B) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under Texas Health and Safety Code, Chapter 361 (concerning the Solid Waste Disposal Act), with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner;

(4) the facility is owned or operated by, or affiliated with, a person who holds a permit to dispose of municipal solid waste.

(b) Recyclable material may be accumulated or stored at a recycling facility only under the following conditions:

(1) the facility accumulating it can show that the material is potentially recyclable and has an economically feasible means of being recycled;

(2) within 270 days after the effective date of this rule, or 270 days from the commencement of a new facility's operations, the amount of material recycled, or transferred to a different site for recycling, equals at least 25% by weight or volume of the material accumulated 90 days from the effective date of this rule or 90 days from the commencement of a new facility's operation; and

(3) during each subsequent six-month period, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the period.

(A) In calculating the percentage of turnover, the percentage requirements are to be applied to each material of the same type.

(B) For the purposes of this section, the following materials shall not be considered to be accumulated, but shall be considered to be recycled, as long as they have been contained, covered, or otherwise managed to protect them from degradation, contamination, or loss of value as recyclable material:

(i) materials for mulching and composting facilities that have been ground for use as mulch, or compost, or prepared and placed in a windrow, static pile, or vessel for composting; or

(ii) materials for other recycling facilities that have been processed for recycling.

(c) A recycling facility that fails to comply with the requirements of this section shall be required, if the executive director so requests in writing, to obtain a permit or registration as a municipal solid waste facility under the provisions of Chapter 330 or Chapter 332 of this title. A facility that receives large quantities of materials as a result of a disaster or other circumstance beyond its control, and a mulching or composting facility that must accumulate a certain volume of materials in order to obtain grinding services from a contractor may not be subject to one or more of the requirements of subsection (b) of this section as determined by the executive director on a case-specific basis for a specified period of time as provided for in subsection (e) of this section.

(d) A facility that processes recyclable material that contains more than incidental amounts of non-recyclable waste must obtain a permit or registration as applicable under Chapter 330 or Chapter 332 of this title unless the executive director approves its request for alternative compliance.

(e) The executive director will use the following procedures in evaluating applications for alternative compliance with the standards in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title (relating to Definitions) or with the requirements of subsection (b) of this section.

(1) The applicant must apply in writing to the executive director for the alternative compliance. The application must address the relevant criteria contained in subsection (f) of this section.

(2) The executive director will evaluate the application and issue a letter granting or denying the application. Any person affected by the decision of the executive director may file with the chief clerk a motion to overturn according to the procedures set out in §50.139(b) - (g) of this title (relating to Motion to Overturn Executive Director's Decision). The executive director may revoke an alternative compliance for good cause.

(f) The executive director may grant requests for alternative compliance if the applicant submits sufficient documentation demonstrating that the applicant cannot meet the requirements in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title without affecting the ability to support related recycling activities. Failure to qualify for alternative compliance will subject the applicant to the permitting or registration requirements of Chapter 330 or Chapter 332 of this title. The executive director's decision will be based on the following factors:

(1) whether the application is for a single facility or for facilities of a similar type recycling the same kind of material;

(2) the locations of all facilities to be covered by the alternative compliance;

(3) the type(s) of material(s) accepted for recycling;

(4) any storage of materials prior to recycling;

(5) how the material(s) are recycled;

(6) the amount of and reasons for unavoidable damage to incoming material during collection, unloading, and sorting that renders the material unmarketable;

(7) reasons that data on tramp or damaged materials cannot be separated from data on other non-recyclable waste;

(8) reasonable efforts used at the facility or facilities to maintain and enforce source-separation, or reasons why source-sepa-

ration cannot be practicably maintained and enforced at the facility or facilities;

(9) the amount and type of non-recyclable waste disposed of by the facility or facilities, the method of disposal, and the amount of time between receiving the waste and disposal;

(10) the prevalence of the practice on an industry-wide basis, or on the basis of other similar facilities recycling the same kind of material;

(11) reasons why alternative compliance would be protective of the environment and human health and safety; and

(12) other relevant factors.

(g) A municipal solid waste recycling facility that produces mulch or compost that is not required to have a permit or registration that stores combustible materials and is located in Bexar County shall comply with the following requirements of this subsection. This subsection applies to facilities that are exempt from other requirements of this section as provided in subsection (a) of this section.

(1) Storage time limits for combustible material. An amount equal to at least 90% by weight or volume of combustible materials accumulated at the beginning of a 12-month period must be removed from the facility during each subsequent 12-month period. The 12-month period begins on the day this subsection becomes effective for existing facilities, on the first day that materials are received for a new facility, or as otherwise approved by the executive director. If a volume-based demonstration is used, the owner or operator will apply an appropriate conversion factor, as specified in the notice of intent to operate the facility and as approved by the executive director, based on facility operations to convert volumes of incoming material to equivalent volumes of outgoing material. For composting processes that need longer than 12 months, the owner or operator may request a compliance period longer than 12 months from the accumulation of material to demonstrate 90% removal of material accumulated during an earlier 12-month period. Requests for a longer compliance period must be accompanied by a technical justification as well as any supporting information for the additional time. The conversion factor and alternate compliance period may be periodically reviewed by the executive director to ensure that material is being removed from the facility.

(2) Maximum volume of combustible material. A facility shall not store processed or unprocessed combustible material in excess of the maximum volume of material indicated in the current notice of intent to operate the facility submitted to the executive director.

(3) Time limits for processing. All combustible material stored by a facility to produce mulch or compost must be ground so that 100% has a particle size of six inches or less in at least one dimension and 90% has a particle size of six inches or less in all dimensions no later than 90 days after receipt. Material will not be considered processed until it is ground to the specified dimensions. Under certain circumstances, an owner or operator may request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material.

(4) Pile size limits. Each pile of combustible material shall have dimensions not to exceed 25 feet in height. Unprocessed combustible material shall not cover an area greater than 50,000 square feet at the facility, with no single pile exceeding 8,000 square feet. A pile of processed combustible material shall not cover an area greater than 25,000 square feet.

(5) Number of piles. The number of piles of combustible materials at the facility shall not exceed the maximum number specified

in the notice of intent to operate the facility submitted to the executive director.

(6) Fire lanes between piles. There shall be a minimum separation of 40 feet from piles of unprocessed combustible materials and a minimum separation equal to the pile height between piles of processed combustible materials. An all-weather road shall encircle the area used for processing and storage of combustible material. At a minimum, this all-weather roadway shall have minimum 25-foot turning radii; shall be capable of accommodating firefighting vehicles during wet weather; and shall meet applicable local requirements and specifications. The open space between buildings and piles shall be kept open at all times; and be maintained free of combustible material, rubbish, equipment, or other materials. Upon coordination with the local fire marshal, the distance required may be increased, as necessary, to protect human health and safety.

(7) Buffer zone. The set back distance from all property boundaries to the edge of the areas receiving, processing, or storing material must be at least 50 feet.

(8) Recharge Zone or Transition Zone. Notwithstanding the applicability requirements of Chapter 213 of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions), facilities located on a recharge or transition zone shall have a water pollution abatement plan consistent with the requirements of §213.5(b) of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions).

(9) Notice of intent. By the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, the owner or operator must file a notice of intent in accordance with §328.5(b) of this title (relating to Reporting and Recordkeeping Requirements) that also includes provisions to demonstrate compliance with this subsection. A revised notice of intent must be filed with the executive director before revising a volume conversion factor or before a facility exceeds the maximum amount of material to be stored as specified in the current notice of intent.

(10) Recordkeeping. The owner or operator of a facility subject to the requirements of this subsection must maintain all records necessary to demonstrate compliance with this subsection.

(11) Compliance. Failure to operate and maintain a facility as proposed in the current notice of intent for the facility is a violation of this chapter.

(12) Effective date. The requirements of this subsection do not become effective until one year after commission adoption of this subsection.

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 September 12, 2008.

TRD-200804957
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 10, 2009
Proposal publication date: April 4, 2008
For further information, please call: (512) 239-2548



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.597

The Comptroller of Public Accounts adopts new §3.597, concerning margin: Business Tax Advisory Committee, without changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5894). This section implements House Bill 3928, 80th Legislature, 2007, which revises the franchise tax. This section establishes procedures for the functions of the Business Tax Advisory Committee under Tax Code, Chapter 171. Subsection (a) provides that this section only applies to franchise tax reports due on or after January 1, 2008. Subsection (b) dictates the membership of the committee. Subsection (c) defines the purpose of the committee. Subsection (d) establishes procedures for the functions of the advisory committee. Subsection (e) lists the expiration date of this section.

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002 and §111.022, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §171.214.

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.

Filed with the Office of the Secretary of State on September 9, 2008.

TRD-200804878
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: September 29, 2008
Proposal publication date: July 25, 2008
For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION SUBCHAPTER A. COMMITMENT AND RECEPTION

37 TAC §85.1

The Texas Youth Commission (TYC) adopts an amendment to §85.1, concerning Legal Requirements for Admission, with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5897). Changes to the proposed text are addressed in the summary of comments and responses below.

The justification for the amended rule is compliance with recently enacted legislation, as well as providing a more efficient intake and classification process. The amended rule adds certain documents required under Human Resources Code §61.0651 to the list of documents committing counties are required to provide upon commitment of a youth to TYC.

The commission received only one comment regarding the proposed rule. The comment was submitted by Advocacy Inc.

Comment: Language should be added that would clarify that educational records provided by committing counties includes special education records.

Response: The commission agrees to amend subsection (c)(13) to include the following text "education records, including any special education records."

The amendment is adopted under Human Resources Code, §61.0651, which requires committing courts to provide certain documents upon commitment of a child to the commission, and Family Code, §54.04(e), which requires the commission to accept a person properly committed to it by a juvenile court.

§85.1. *Legal Requirements for Admission.*

(a) The purpose of this rule is to establish documentation required and requested by the Texas Youth Commission (TYC) from each juvenile court committing youth to TYC.

(b) Each youth committed to the TYC must be accompanied by legal and supporting documents supplied by the committing court.

(c) Upon admission, the following documents are required of the committing court:

(1) certified copy of the Order of Commitment;

(2) immunization records;

(3) Common Application, including the computerized referral and case history for the youth documenting case disposition, contact information for the youth's parents or guardians, the name, address, and telephone number of the court administrator in the committing county, and Title IV-E eligibility screening information;

(4) detention order(s) (initial and subsequent) for offense(s) which resulted in commitment to TYC;

(5) for sentenced offenders, the amount of time spent in detention in connection with the offense for which the youth was sentenced. It is preferable for the detention information to be included in the Order of Commitment;

(6) petition, adjudication, and disposition orders for the youth, including the youth's thumbprint;

(7) if the commitment is the result of revocation of probation, a copy of the conditions of probation and the revocation order;

(8) any law enforcement incident reports concerning the offense for which the youth is committed;

(9) any sex offender registration documentation and information;

(10) birth certificate for all youth;

(11) social security number or social security card, if available;

(12) social history;

(13) education records, including any special education records;

(14) medical and dental records;

(15) any existing psychological and psychiatric reports;

(16) pretrial detention time creditable to the youth's sentence;

(17) progressive sanctions deviation worksheet if assigned progressive sanctions level does not equal the progressive sanctions guideline level; and

(18) when available, the Victim Impact Statement and/or Victim Information form.

(d) The TYC intake staff shall review the commitment order to determine if, on its face, it meets all requirements of a valid court order before TYC admits the youth. TYC will not look beyond the document itself for determining validity.

(e) No youth, under any circumstance, shall be admitted to TYC without a certified copy of the Order of Commitment, immunization records (except for undocumented aliens), and the Common Application. All other documents may be received subsequent to admission.

(f) No youth shall be accepted to custody of TYC until TYC staff issues a written receipt to the entity delivering the youth at the designated place of intake accompanied by the required legal documents.

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 September 11, 2008.

TRD-200804951

Richard Nedelkoff

TYC Conservator

Texas Youth Commission

Effective date: October 1, 2008

Proposal publication date: July 25, 2008

For further information, please call: (512) 424-6475



CHAPTER 105. JUVENILE CORRECTIONAL OFFICERS

37 TAC §105.1

The Texas Youth Commission adopts new §105.1, concerning Juvenile Correctional Officer Training, without changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5898).

The justification for the new rule is enhanced Juvenile Correctional Officer job performance due to additional up-front training, as well as compliance with mandates enacted by the 80th Texas Legislature. The new rule will require each Juvenile Correctional Officer to receive 300 hours of training prior to independently commencing supervisory duties.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Human Resources Code §61.0356, which provides the commission with the responsibility to ensure each juvenile correctional officer employed by the commission receives at least 300 hours of training prior to independently commencing his or her duties.

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 September 11, 2008.

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Richard Nedelkoff

TYC Conservator

Texas Youth Commission

Effective date: October 1, 2008

Proposal publication date: July 25, 2008

For further information, please call: (512) 424-6475



PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.1 concerning Definitions with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5899).

The amendment adds language to §211.1, concerning Definitions, to include: adding definitions for personal identification number (PID), separation, and TCLEDDs; modifying definitions for ALJ or administrative law judge, contractual training provider, convicted, killed in the line of duty, proprietary training contractor, reactivate, and reserve; and deleting definitions for hearings examiner, resigned/terminated, and Texas peace officer. Amendments to this rule make it necessary to re-number subsection (a).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, §1701.251, Training Programs; Instructors, §1701.312, Disqualification: Felony Conviction or Placement On Community Supervision, §1701.316, Reactivation of Peace Officer License, §1701.3161 Reactivation of Peace Officer License: Retired Peace Officers, §1701.452 Employment Termination Report, and Code of Criminal Procedure, Article 55.04 Violation of Expunction Order.

§211.1. Definitions.

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

(1) Academic provider--A school, accredited by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(2) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Higher Texas Education Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, or the Western Association of Schools and Colleges.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the Commission.

(5) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(6) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(7) Alternative delivery--A learning event characterized by a separation of place or time between the instructor and student, the students, and/or the student and learning resources; and in which the interaction between these is conducted through one or more media.

(8) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Occupations Code, Chapter 1701, without regard to pay or employment status.

(9) Background investigation--A pre-employment background investigation that is designed to satisfy:

(A) that an applicant is in compliance with all minimum standards for employment, and

(B) that an applicant is screened out, who, based on their past history or other relevant information, is found to be unsuitable for the position in question.

(C) The background investigation consists of a report that documents, but is not limited to the following:

(i) A review of all previous law enforcement employment, including contacting all former law enforcement employers,

(ii) an investigation looking specifically at a person's dependability; integrity; initiative; situational reasoning ability; self-control; writing skills; reading skills; oral communications skills; interpersonal skills; and physical ability; and

(iii) a report that documents an investigation into an applicant's suitability for licensing and appointment which includes: biographical data; scholastic data; employment data; criminal history data; interviews with references, supervisors, and other people who have knowledge of the person's abilities, skills, and character; and a summary of the investigator's findings and conclusions regarding the applicant's moral character and suitability.

(10) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(11) Basic peace officer course--The current commission developed course(s) required for licensing as a peace officer, taught at a licensed law enforcement academy in accordance with commission requirements.

(12) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(13) Chief administrator--The head or designee of a law enforcement agency.

(14) Commission--The Texas Commission on Law Enforcement Officer Standards and Education.

(15) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(16) Commissioners--The nine commission members appointed by the governor and, where appropriate, the five ex-officio members.

(17) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(18) Contractual training provider--A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor that conducts specific education and training under a contract with the commission.

(19) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(20) Court-ordered community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(21) Distance education--The enrollment and study with an educational institution, which provides lesson materials prepared in a sequential and logical order for study by students on their own.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Endorsement--An official document stating that an individual has met the minimum training standards appropriate to the type of examination sought as determined by the Commission.

(24) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(25) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal

officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(26) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(27) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(28) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(29) Governing body resolution--A formal expression or action by a governing body authorizing a particular act, transaction, appointment, intention, or decision.

(30) High school diploma--High school diploma is a document issued by a school district or a school accredited by the Texas Private School Accreditation Commission verifying that the recipient has successfully completed the course of study prescribed by the school district and accepted by the Texas Education Agency.

(31) Individual--A human being who has been born and is or was alive.

(32) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Government Code §511.0092.

(33) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(34) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(35) Law enforcement academy--A school operated by a governmental entity that has been licensed by the commission, which may provide basic licensing courses and continuing education.

(36) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Transportation Code §546.003 and §547.702.

(37) Lesson plan--Detailed guides from which an instructor teaches. The plan includes the goals, specific content and subject matter, performance or learning objectives, references, resources, and method of evaluating or testing students.

(38) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(39) Licensee--An individual holding a license issued by the commission.

(40) Line of duty--Any lawful and reasonable action, which a Texas peace officer is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(41) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(42) Officer--A peace officer or reserve identified under the provisions of the Occupations Code, §1701.001.

(43) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting

device, 3 power or less, that is carried by the individual officer in an official capacity.

(44) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Occupations Code, §1701.001.

(45) Personal Identification Number (PID)--a unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(46) Placed on probation--Has received an adjudicated, unadjudicated or deferred adjudication probation for a criminal offense.

(47) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(48) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 3 power that is carried by the individual officer in an official capacity.

(49) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(50) Public security officer--A person employed or appointed as an armed security officer by this state or a political subdivision of this state. The term does not include a security officer employed by a private security company that contracts with this state or a political subdivision of this state to provide security services for the entity.

(51) Reactivate--To make a license issued by the commission active after at least a two-year break in service and the licensee's failure to complete legislatively required training.

(52) Reinstate--To make a license issued by the commission active after disciplinary action or after expiration of a license due to failure to obtain required continuing education.

(53) Renew--Continuation of an active license issued by the commission.

(54) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Occupations Code, §1701.001.

(55) Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(56) Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Occupations Code, §1701.452.

(57) SOAH--The State Office of Administrative Hearings.

(58) Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(59) TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(60) Telecommunicator--A dispatcher or other emergency communications specialist appointed under or governed by the provisions of the Occupations Code, Chapter 1701.

(61) Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title (relating to Training Coordinator).

(62) Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(63) Training hours--Classroom or distance education hours reported in one-hour increments.

(64) Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(65) Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by the commission to provide preparatory or continuing training for licensees or potential licensees.

(66) Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is October 5, 2008.

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 September 15, 2008.

TRD-200805032

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Standards and Education

Effective date: October 5, 2008

Proposal publication date: July 25, 2008

For further information, please call: (512) 936-7713



CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.15 concerning Enrollment Standards with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5903).

The amendment deletes "Training Credit" from the title. Subsection (c) will be amended by replacing academy licensee with licensed academy. Subsection (d) is amended to reflect the effective date of these changes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, §1701.151, General Powers of Commission; Rulemaking

Authority, §1701.251, Training Programs; Instructors, and §1701.255, Enrollment Qualifications.

§215.15. *Enrollment Standards.*

(a) In order for an individual to enroll in any basic licensing course that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) written documentation that the person is currently licensed by the commission; or

(2) if the individual is not licensed by the commission, documentation that the individual has been subjected to a search of local, state and national records to disclose any criminal record;

(A) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(B) community supervision history:

(i) has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(ii) the commission may approve the application of an individual who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(C) conviction history:

(i) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(ii) the commission may approve the application of an individual who was convicted of a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period.

(D) For purposes of this section, the commission will construe any court ordered community supervision, probation, or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(i) another penal provision of Texas law; or

(ii) a penal provision of any other state, federal, military or foreign jurisdiction.

(E) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas law.

(F) has never been convicted of any family violence offense;

(G) is not prohibited by state or federal law from operating a motor vehicle;

(H) is not prohibited by state or federal law from possessing firearms or ammunition; and

(I) is a U.S. citizen.

(b) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) a high school diploma;

(2) a high school equivalency certificate and evidence of successful completion of at least 12 hours from an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or

(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(c) The enrollment standards established in this section do not preclude the licensed academy from establishing additional requirements or standards for enrollment in law enforcement training programs.

(d) The effective date of this section is October 5, 2008.

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 September 15, 2008.

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Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7713



CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.31

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.31, concerning Retired Peace Officer Firearms Proficiency, with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5903).

The title is amended to include federal officers in order to reflect the title of Texas Occupations Code §1701.357. Subsection (a) is amended to reflect the retired officers in Texas Occupations Code §1701.357(b)(1). Subsection (b) is amended to reflect the federal officers identified in Texas Occupations Code §1701.357(a)(2) and (3). Subsection (d) is amended to reflect the effective date of these changes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, §1701.151, General Powers of Commission; Rulemaking Authority, and §1701.357, Weapons Proficiency for Certain Retired Peace Officers and Federal Law Enforcement Officers.

§221.31. *Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency.*

(a) The head of a state or local law enforcement agency may allow an honorably retired peace officer the opportunity to demonstrate weapons proficiency in accordance with Occupations Code §1701.357.

(b) The head of a state law enforcement agency may allow an honorably retired federal criminal investigator or a qualified retired law enforcement officer the opportunity to demonstrate weapons proficiency in accordance with Occupations Code §1701.357.

(c) The minimum qualification requirements shall be the same as §217.21(c) of this title.

(d) The effective date of this section is October 5, 2008.

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 Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7713



CHAPTER 223. ENFORCEMENT

37 TAC §223.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.19, concerning Revocation of License, with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5904).

The amendment reflects the expunction requirements of state statutes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, §1701.502, Felony Conviction or Placement on Community Supervision, and Code of Criminal Procedure Article 55.04, Violation of Expunction Order.

§223.19. *Revocation of License.*

(a) The commission shall immediately revoke any license issued by the commission if the licensee is or has been convicted of a felony offense under the laws of this state, another state, or the United States as provided below. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. Mail to the address shown on the Texas driver's license record of the licensee and to the address of the agency showing the licensee under current or last appointment.

(b) A deferred adjudication community supervision is not a felony conviction.

(c) A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(d) Except as provided by subsection (a) of this section, the commission may revoke the license of a person who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that person. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(e) The commission shall revoke any license issued by the commission if the licensee:

(1) is or has been discharged from any military service under less than honorable conditions including specifically:

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character.

(2) has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission;

(3) has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile thereof; or

(4) violates any section where revocation is the penalty noted.

(f) Revocation of a license shall permanently disqualify a person from licensing and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;

(3) the report alleged to be false or untruthful was found to be truthful; or

(4) the section was not violated.

(g) During the direct appeal of any appropriate conviction, a license may be conditionally revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(h) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.

(i) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(j) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(k) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(l) The commission may revoke a license even though it has become inactive by some other means, such as:

- (1) expiration;
- (2) suspension;
- (3) voluntary surrender;
- (4) two-year break in service; or
- (5) any other means.

(m) The date of revocation will be the earliest date that:

- (1) a waiver was signed by the holder; or
- (2) a final order of revocation was signed by the commissioners.

(n) The effective date of this section is October 5, 2008.

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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For further information, please call: (512) 936-7713



37 TAC §223.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.20, concerning Revocation of License for Constitutionally Elected Officials, with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5905).

The amendment reflects the expunction requirements of state statutes and changes to Texas Occupations Code §1701.501 during the 80th Legislative Session by House Bill 488.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, §1701.501, Disciplinary Action §1701.502, Felony Conviction or Placement on Community Supervision, and Code of Criminal Procedure, Article 55.04 Violation of Expunction Order.

§223.20. *Revocation of License for Constitutionally Elected Officials.*

(a) The commission shall immediately revoke any license issued by the commission to a constitutionally elected officer if the licensee is or has been convicted of a felony offense under the laws of this state, another state, or the United States as provided below. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. mail to the address shown on the Texas driver's license record of the licensee and to the address of the agency showing the licensee under current or last appointment.

(b) A deferred adjudication community supervision is not a felony conviction.

(c) A constitutionally elected officer is convicted of a felony when an adjudication of guilt on a felony offense is entered against that officer by a court of competent jurisdiction regardless of:

(1) the sentence is subsequently probated and the officer is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the officer is dismissed and the officer is released from all penalties and disabilities resulting from the offense; or

(3) the officer is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(d) Except as provided by subsection (a) of this section, the commission may revoke the license of a constitutionally elected officer who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that officer. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the officer previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(e) Revocation of a license shall permanently disqualify a constitutionally elected officer from licensing, and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;

(3) the report alleged to be false or untruthful was found to be truthful; or

(4) the section was not violated.

(f) During the direct appeal of any appropriate conviction, a license may be conditionally revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(g) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.

(h) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(i) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(j) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator or supervising authority of any agency shown to have the licensee under either current or latest appointment.

(k) The commission may revoke a license even though it has become inactive by some other means, such as:

(1) expiration;

(2) suspension;

(3) voluntary surrender;

(4) two-year break in service; or

(5) any other means.

(l) The date of revocation will be the earliest date that:

(1) a waiver was signed by the holder; or

(2) a final order of revocation was signed by the commissioners.

(m) The effective date of this section is October 5, 2008.

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 Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7713



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) adopts the following new section, with changes, to Chapter 811, relating to Choices, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4981):

Subchapter A. General Provisions, §811.4

The Commission adopts the following new section, without changes, to Chapter 811, relating to Choices, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4981):

Subchapter A. General Provisions, §811.5

The Commission adopts amendments to the following section, with changes, of Chapter 811, relating to Choices, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4981):

Subchapter A. General Provisions, §811.3

The Commission adopts amendments to the following sections, without changes, of Chapter 811, relating to Choices, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4981):

Subchapter A. General Provisions, §811.2

Subchapter B. Choices Services Responsibilities, §§811.11, 811.14, and 811.16

Subchapter C. Choices Services, §§811.21, 811.26, 811.27, 811.29, and 811.34

Subchapter D. Choices Work Activities, §811.41, §§811.43 - 811.46, and §§811.48 - 811.51

Subchapter E. Support Services and Other Initiatives, §811.64

The Commission adopts the repeal of the following section without changes, of Chapter 811, relating to Choices, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4981):

Subchapter D. Choices Work Activities, §811.47

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of this Chapter 811 amendment is to:

--implement the regulatory requirements issued by the United States Department of Health and Human Services (HHS);

--align Chapter 811 with previously released Commission guidance (i.e., Workforce Development (WD) Letters, Technical Assistance Bulletins, policy clarifications);

--implement changes based on the findings in the State Auditor's Office October 2007 audit of the Choices program; and

--incorporate technical changes for clarification and consistency throughout the chapter.

In February 2006, the Deficit Reduction Act (DRA) of 2005 (P.L. 109-171) reauthorized the Temporary Assistance for Needy Families (TANF) program through Federal Fiscal Year 2010. In addition to providing ongoing funding for TANF, DRA also changed several provisions in law related to TANF work participation. DRA directed HHS to issue regulations regarding:

--allowable work activities;

--verification, documentation, and internal control procedures; and

--inclusion of certain child-only cases in the calculation of work participation rates.

On February 5, 2008, HHS issued TANF final regulations (final regulations), which include changes from the June 29, 2006, interim final regulations. The final regulations also provide clarification on a number of elements retained from the interim final regulations.

The final regulations become effective on October 1, 2008. Local Workforce Development Boards (Boards) have been informed of the major changes affecting Choices services, through a Commission meeting, policy concept, and conference call, prior to the approval of this rulemaking. While there may be more stringent requirements under this chapter, the Commission's intent is to provide Boards the same flexibility offered under the TANF interim final regulations.

In addition to the changes made to comply with the final regulations, and to align the rules with other current federal regulations, technical changes are made to:

--simplify and clarify rule language;

--consolidate policies, procedures, and memoranda of understanding (MOUs) requirements;

--consolidate documentation, supervision, and verification requirements;

--update terminology and definitions; and

--remove obsolete provisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§811.2. Definitions

Section 811.2(2) adds the term "nonrecipient parent" to the definition of Choices eligible to incorporate the federal definition of "work eligible individual," which is included as new §811.2(16). Senate Bill (SB) 589, enacted by the 80th Texas Legislature, Regular Session (2007), makes nonrecipient parents eligible to receive Choices services. This legislation was in response to the interim final regulations, which included nonrecipient parents in states' performance calculations for the first time.

Section 811.2(3)(A), the definition of exempt Choices participant, replaces the term "an adult or teen head of household" with the

term "Choices eligible" to provide consistency with other definitions in this chapter.

Section 811.2(3)(B), the definition of mandatory Choices participant, replaces the text "An adult or teen head of household, including an extended TANF recipient, conditional applicant, and sanctioned family, as defined in this section" with the term "Choices eligible" to provide consistency with other definitions in this chapter.

New §811.2(9)(A) - (C) defines the term "nonrecipient parent" as adults or minor heads of household not receiving financial assistance, but living with their own children who are receiving financial assistance. The definition of nonrecipient parent is added to align with HHS's definition of "work eligible individual," as defined in new §811.2(16), which includes certain nonrecipient parents. Nonrecipient parents include parents who are not eligible for TANF cash assistance for the following reasons:

(A) disqualification by the Texas Health and Human Services Commission (HHSC). These disqualifications include parents who:

(i) refuse to comply with Medicaid third-party resource requirements;

(ii) do not comply with Social Security number requirements;

(iii) are found guilty of an intentional program violation;

(iv) fail to report the temporary absence of a certified child;

(v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;

(vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or

(vii) refuse to cooperate with the program integrity assessment process;

(B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or

(C) because they have exhausted their TANF state time limit.

SB 589 makes nonrecipient parents eligible to receive Choices services. This legislation was in response to the interim final regulations, which included nonrecipient parents in states' performance calculations for the first time.

New §811.2(13) defines the term "secondary school" as educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a General Educational Development (GED) credential.

New §811.2(16)(A) - (C) defines the term "work eligible individual" as adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents--with the following exceptions:

(A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;

(B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; and

(C) Recipients of SSI or SSDI, on a case-by-case basis.

Certain paragraphs in §811.2 have been renumbered to accommodate additions or deletions.

§811.3. Choices Service Strategy

Section 811.3(b), requiring local policies for a Choices service strategy, is removed and incorporated in §811.4(a)(1).

Section 811.3(c) has been renumbered as new §811.3(b).

Section 811.3(b)(5) removes the text "assistance with completion of secondary school or a General Educational Development (GED) credential" and replaces it with the text "secondary school" as defined in new §811.2(13) for clarity and consistency.

Section 811.3(b)(6) removes the text requiring Boards to develop MOUs with agencies to serve Choices eligibles with disabilities and incorporates it into new §811.4(c)(1).

Section 811.3(b)(9), requiring a local-level MOU in cooperation with HHSC for coordinated case management, is removed and incorporated in §811.4(c)(2).

Section 811.3(b)(10), requiring Boards to establish housing partnerships, is removed and incorporated in §811.4(c)(4).

§811.4. Policies, Memoranda of Understanding, and Procedures

New §811.4 is added to consolidate all requirements for the development of policies, procedures, and MOUs throughout Chapter 811.

Section 811.4(a)(1) - (3) requires Boards to establish policies regarding the following:

(1) a Choices service strategy, as defined in §811.3, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) utilize a work first design as referenced in §811.3(b)(2) to provide Choices participants access to the labor market; and

(C) assist former TANF recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) the amount of wages subsidized for subsidized employment placements; and

(3) the methods and limitations for provision of work-related expenses.

Section 811.4(b)(1) - (2) provides that Boards may establish optional policies that:

(1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITAs) as described in Chapter 841 of this title to provide Choices services for Choices participants paid for with TANF funds; and

(2) make post-employment services available to:

(A) former TANF recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

Section 811.4(c)(1) - (4) requires Boards to ensure that the following MOUs and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities to maximize their potential for success in employment;

(2) A local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission;

(3) A local-level MOU with the Texas Department of State Health Services for providing mental health and substance abuse services to Choices participants; and

(4) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

Section 811.4(d)(1) - (6) requires Boards to ensure that procedures are developed to:

(1) ensure that job development services are available to Choices participants, including:

(A) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting the employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) ensure that job placement services are available to Choices participants;

(3) notify applicants and conditional applicants, in conjunction with HHSC, on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

(4) notify HHSC of applicants and conditional applicants who have contacted a Texas Workforce Center to request alternative WOAs;

(5) ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(c)(7)(A) and (B); and

(6) determine a family's inability to obtain child care.

Section 811.4(e) requires that Boards electing to establish one or more of the optional policies described in §811.4(b) shall ensure that corresponding procedures are also developed for those policies.

Comment: One commenter stated that a local-level MOU with the Texas Department of State Health Services is not needed. The commenter asserted that Boards should be able to determine locally which agencies need an MOU or other types of local operating agreements.

Response: The Commission appreciates the comment. However, the Commission believes it is necessary to establish an MOU because some Texas Department of State Health Services' activities to which Choices participants are referred may count toward their participation requirements. Given the new verification and documentation requirements under the TANF final regulations, a strong agreement must be in place to ensure that each party has a clear understanding of its role in service delivery and its requirements for supervision, documentation, and verification.

Comment: One commenter stated that the wording of §811.4(d)(3), "to notify applicants and conditional applicants--in

conjunction with HHSC--on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs" places an unnecessary burden on Boards. The commenter stated that Boards should be required to ensure that regularly scheduled WOAs and alternative WOAs are held and to notify HHSC of the same. The commenter expressed that Boards should not be required to "notify applicants and conditional applicants" of these WOAs--the notification should be HHSC's responsibility.

Response: The Commission appreciates the comment; however, the Commission points out that this is not a new requirement. New §811.4(d)(3) merely incorporates the contents of previous §811.11(a)(1).

§811.5. Documentation, Verification, and Supervision of Work Activities

New §811.5 consolidates all requirements for documentation, verification, and supervision of Choices work activities throughout the chapter.

Section 811.5(a) clarifies that all required information, including but not limited to pay stubs, contact names, and time sheets related to the documentation and verification of participation in Choices work activities, as described in §811.5, shall be documented and verified in The Workforce Information System of Texas (TWIST), the Agency's automated information system. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(b) clarifies that all participation in Choices shall be verified and documented and that self-attestation is not allowed. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(c) requires that participation in paid work activities, as described in §§811.42-811.44 of Subchapter D, be documented and verified at least monthly in TWIST unless participation is projected, as described in §811.34(3) of Subchapter C. If participation is projected, participation in paid work activities shall be documented and verified in TWIST at least every six months.

Section 811.5(d)(1) - (2) requires that participation in unpaid activities, as described in §§811.41, 811.45, and 811.46 of Subchapter D, be supervised daily and verified and documented at least monthly in TWIST, replacing the previous requirement that documentation be entered biweekly. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(e)(1) - (2) requires that up to one hour of unsupervised homework time for every hour of class time in unpaid activities, as described in §§811.48 - 811.50 of Subchapter D, can be counted toward a Choices participant's work requirement. All homework hours in excess of one hour per every hour of class time shall be directly monitored, supervised, verified, and documented.

Section 811.5(e)(3) requires that study or homework time in unpaid activities, as described in §§811.48 - 811.50, shall be counted only toward a Choices participant's family participation requirement if:

(A) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution; and

(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class.

Section 811.5(e)(4) requires that good or satisfactory progress as determined by the educational institution must be verified and documented in TWIST at least monthly for unpaid activities, as described in §§811.48 - 811.50.

Section 811.5(e)(5) requires that all participation in unpaid activities, as described in §§811.48 - 811.50, be supervised daily.

Section 811.5(e)(6) requires that all participation be verified and documented in TWIST at least monthly. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Comment: One commenter stated that proposed 40 TAC §811.5(e)(3)(B) should be amended to read, "the educational institution's policy requires a certain number of out-of-class preparation hours for the class (a requirement by an instructor within the scope of the instructor's authority at the institution for out-of-class preparation hours shall be deemed to be policy of the institution)." The commenter explained that the reason for this improvement is that whether or not out-of-class preparation hours will be needed may depend on the particular subject matter being studied, on the level of student ability in the particular class section, on the health of the students at a particular time, and other variables that are best left to the instructor, as long as the instructor's requirement is within the scope of the instructor's authority.

Response: While the Commission agrees that an individual instructor can be a representative for an educational institution's program, the Commission must seek further guidance from the Administration for Children and Families (ACF) on the TANF final regulations. Specifically, a determination is needed on whether the final regulations require that an educational institution's program standard be applied to all participants when determining out-of-class homework preparation hours or whether it can be individualized for each participant by the instructor representing the educational institution's program. The Commission will issue further guidance based on ACF's response.

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

The Commission adopts the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(a)(1), requiring Boards to ensure that procedures are developed, in conjunction with HHSC, to notify applicants and conditional applicants on the availability of regularly scheduled WOAs and alternative WOAs, is removed and incorporated in §811.4(d)(3).

Section 811.11(a)(5), requiring Boards to ensure that procedures are developed to notify HHSC of applicants and conditional applicants who have contacted a Texas Workforce Center to request alternative WOAs, is removed and incorporated in §811.4(d)(4).

Section 811.11(d), requiring Boards to ensure that procedures are developed to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, is removed and incorporated in §811.4(d)(5).

Certain subsections in §811.11 have been relettered, and certain paragraphs have been renumbered, to accommodate additions or deletions.

§811.14. Noncooperation

Section 811.14(c) and §811.14(d) replace the term "Board" with the term "Agency" with regard to defining timely and reasonable attempts. Previously, Boards were required to make a timely and reasonable attempt--as defined by the Board--to contact Choices participants prior to requesting a sanction for failure to meet Choices work requirements. The rule allowed Boards to establish their own policies, procedures, and time frames for timely and reasonable attempts.

In October 2007, the State Auditor's Office (SAO) released an audit report on the Agency's Choices program. The SAO report highlights concerns surrounding the timeliness of requests to sanction customers who do not comply with Choices work requirements. In 43 percent of the sanction cases tested, SAO found that caseworkers did not request sanctions promptly for these customers. As a result, customers who were no longer eligible continued to receive Choices services.

Agency monitoring staff has also raised concerns about the lack of clearly defined time frames in Boards' timely and reasonable attempt policies. Lack of specific time frames can result in delays in requesting--and thereby imposing--sanctions. This can result in inequitable treatment of Choices participants--some may be sanctioned quickly, while for others the process is lengthy.

An Agency-standardized timely and reasonable attempt policy will ensure that Choices participants across the state receive the same information about participation requirements, the consequences of not participating, good cause, and the right to appeal sanctions. Additionally, a standardized policy will ensure equitable treatment and timelines for all Choices participants who fail to comply with work requirements.

§811.16. Good Cause for Choices Participants

Section 811.16(c)(4) is deleted; new §811.16(c)(4) provides for a single good cause reason for all Choices participants caring for an ill or disabled family member regardless of whether the family member attends school full time. This change conforms with the final regulations, which now allow all work-eligible individuals caring for an ill or disabled family member to be disregarded from federal work participation rates, regardless of whether the family member attends school full time.

New §811.16(c)(6)(A) removes language referring to §811.47, which is repealed. WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST Activity Codes," removes providing child care services to Choices participants in community service as an allowed activity effective October 1, 2007, because of verification requirements in the interim final regulations, guidance provided by ACF on Texas' Work Verification Plan, and the lack of participation in this activity. The verification required by HHS is not cost-effective based on the number of participants in this activity.

Section 811.16(d) removes the requirement for Boards to promulgate policies and procedures for determining a family's inability to obtain child care and incorporates the requirement in §811.4(d)(6).

Certain paragraphs in §811.16 have been renumbered to accommodate additions or deletions.

SUBCHAPTER C. CHOICES SERVICES

The Commission adopts the following amendments to Subchapter C:

§811.21. General Provisions

Section 811.21(d), providing Boards the option to require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITAs), is removed and incorporated in §811.4(b)(1) and §811.4(e).

Section 811.21(e), requiring Boards to make job development services available, is removed and incorporated in §811.4(d)(1).

Section 811.21(g), requiring Boards to make job placement services available, is removed and incorporated in §811.4(d)(2).

Certain subsections in §811.21 have been relettered to accommodate additions or deletions.

§811.26. Special Provisions Regarding Community Service

Section 811.26(a) removes the term "participation" when referring to the required four weeks of Choices service and replaces it with the term "enrollment." This change is made for consistency with guidance on when the community service requirement begins.

Further, §811.26(a) removes the six-week limit on participation in job search and job readiness activities per federal fiscal year and replaces it with an hourly limit per 12-month period for consistency with the requirements set forth in 45 C.F.R. §261.34 and §811.27.

Section 811.26(c) removes the term "Exempt recipients who voluntarily participate in Choices services" and replaces it with the term "Exempt Choices participants." This change is made to provide consistency with the definition of exempt Choices participants in §811.2(3)(A).

§811.27. Special Provisions Regarding Job Search and Job Readiness

Section 811.27 reflects the new federal limits on participation in job search and job readiness activities from six weeks per federal fiscal year to an hourly limit per 12-month period, as required by 45 C.F.R. §261.34. The final regulations maintain the limit of four consecutive weeks of participation in job search and job readiness activities but convert the six-week limit to hours (120 for single parents with a child under age six and 180 for all other Choices eligibles) and change the period from a federal fiscal year to a rolling 12-month period.

Section 811.27(a) changes the job search limit from six weeks to 120 or 180 hours as described in §811.27(b)(2), and changes the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary to comply with the final regulations.

New §811.27(b)(2)(A) reflects the change in the job search limit from six weeks to 120 hours for single parents with a child under age six and the change in the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period.

New §811.27(b)(2)(B) reflects the change in the job search limit from six weeks to 180 hours for all other Choices eligibles and the change in the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary to comply with the final regulations.

Section 811.27(b)(3) is modified to provide consistency with changes in §811.27(b)(2), stating that after four consecutive weeks of participation in job search and job readiness activities, Choices participants are not eligible for additional participation in

job search and job readiness activities until they have complied with §811.26(a).

Section 811.27(c) clarifies that in order for a partial week of participation in job search and job readiness activities to count as a full week of participation, a Choices participant must participate in job search and job readiness for at least three days. This subsection is also amended to reflect the change in the period of measurement for the partial-week limit from a federal fiscal year to a 12-month period.

Comment: One commenter asked what changes will take place in TWIST to assist frontline staff with tracking this rolling 12-month period for the four/six weeks of job search, the partial week credit, and the short-term excused absence. The commenter stated that this is a major programmatic change and that it would be helpful if TWIST tracked all activities that are restricted to this 12-month period automatically, i.e., four/six weeks of job search, the partial week that would count for a full week of participation, and short-term excused absences.

Response: The Commission's intent is to provide frontline staff with user-friendly automation solutions to the new rule changes. Therefore, the changes to track the use of excused absences and job search and job readiness hours in TWIST have begun.

§811.29. Special Provisions Regarding the Fair Labor Standards Act

Section 811.29(b) further clarifies that if a customer cannot participate in Fair Labor Standards Act (FLSA)-covered activities for enough hours to satisfy the core activity requirement, Boards shall enroll the customer in additional "non-FLSA-covered" core activities to meet the core-hour requirement. This change is required to be consistent with current Agency guidance.

Section 811.29(b)(1), requiring that Choices participants shall be enrolled in additional core activities, is removed and incorporated in §811.29(b).

Section 811.29(b)(2) is deleted, thereby removing the deeming of hours provision from the Choices rules. The final regulations maintain the deeming provision, which allows states to count any family that participates the maximum hours per month allowed under the FLSA minimum-wage requirement as having satisfied the 20-hour-per-week core activity requirement--even if actual participation falls short of 20 hours per week. However, WD Letter 23-07, issued March 28, 2007, and entitled "Implementation of Amended Choices Rules," instructs Boards not to implement the deeming provision. This guidance was subsequently amended by WD Letter 23-07, Change 1, issued December 27, 2007, and entitled "Implementation of Amended Choices Rules: Update."

The deeming provision was suspended based on guidance from HHS during the process of approving Texas' Work Verification Plan. HHS guidance requires Texas to deem hours based on TANF and food stamp benefits received as of the last day of the month, rather than allowing deemed hours to be determined based on benefits received at the beginning of a month. Changes to existing interfaces with HHSC are required because HHSC currently does not provide the Agency with all information needed in order to comply with federal guidance.

The lack of these interface changes results in the following:

--The Agency is unable to automate the calculation of deemed hours of participation, which is problematic because of the stricter documentation and verification requirements from HHS.

--HHSC's quarterly reports to HHS include full TANF and food stamp benefits information for all TANF recipients, however, the Agency does not receive this same complete information. Therefore, the Agency's calculation of hours to be deemed will not match HHS's calculation, which is likely to result in a lower-than-anticipated participation rate for Texas.

--Supplemental TANF and food stamp benefits can be issued at any time. Thus, Boards may count on the deeming provision to fulfill a customer's work requirement--only to discover at the end of the month that the customer has received supplemental benefits and should have participated more hours in core activities due to a reduction in deemed hours.

At present, if a customer cannot participate in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards must enroll the customer in additional non-FLSA-covered activities to meet the core-hour requirement. The Commission believes that this practice--in place prior to the interim final regulations--remains a workable solution to address concerns about implementing the deeming provision in the current environment.

Comment: One commenter asked what plans are in place to ramp up the interface between HHSC and TWC so that Texas can take advantage of the deeming provision in the new federal rules. The commenter stated that without this provision, Texas participants may be unfairly penalized and made to participate in unnecessary non-core hours, which would result in Texas being more restrictive than other states when implementing the new federal rules. The commenter maintained that removing the deeming of hours may create a hardship for both the Choices participant and Board contractor staff who sometimes struggle in finding non-core alternatives and forcing individuals to participate in non-core alternatives.

Response: The Commission appreciates the comment. The deeming provision was suspended based on guidance from HHS during the process of approving Texas' Work Verification Plan. The guidance requires Texas to deem hours based on TANF and food stamp benefits received as of the last day of the month, rather than allowing deemed hours to be determined based on benefits received at the beginning of a month. Changes to existing interfaces with HHSC would be required because HHSC currently does not provide the Agency with all needed information to comply with HHS guidance. For example, if a participant receives any supplemental benefits for the month and the Board has not included this amount in its calculation of deemed hours, the calculation will be incorrect, and hours of core activities reduced inappropriately. The Commission believes that these changes will require extensive and costly resources and technical research and at this time, the current process provides satisfactory data.

Currently, Boards continue to calculate hours manually based on the amount of TANF and food stamp benefits received as of the last day of the month. If a customer cannot participate in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards must enroll the customer in additional non-FLSA-covered activities to meet the core-hour requirement. The Commission believes that this remains a workable solution to address concerns about implementing the deeming provision in the current environment.

The Commission also clarifies that when participants cannot participate in enough FLSA-covered activities to meet their core-

hour requirement, Texas Workforce Center staff must find additional core activities--not non-core activities--for the participants.

§811.34. Participation Provisions

Section 811.34(2)(A)(ii) converts excused absence provisions from days to hours. Maximum excused absences are now 80 hours per 12 months and 16 hours per month. This change conforms with the final regulations at 45 C.F.R. §261.60(b).

Section 811.34(3) adds the requirement that hours used to project participation in unsubsidized employment (other than self-employment), subsidized employment, and on-the-job training must be verified, in addition to being current and documented. This change conforms with the final regulations at 45 C.F.R. §261.60(c).

Section 811.34(3)(A) adds the requirement that hours used to project participation in self-employment must be verified, in addition to being current and documented. This change conforms with the final regulations at 45 C.F.R. §261.60(c).

Comment: One commenter asked what changes will take place in TWIST to assist frontline staff with tracking this rolling 12-month period for the four/six weeks of job search, the partial week credit, and the short-term excused absence. The commenter stated that this is a major programmatic change and that it would be helpful if TWIST could track all activities that are restricted to this 12-month period automatically, i.e., four/six weeks of job search, the partial week that would count for a full week of participation, and short-term excused absences.

Response: The Commission's intent is to provide frontline staff with user-friendly automation solutions to the new rule changes. Therefore, the changes to track the use of excused absences and job search and job readiness hours in TWIST have begun.

SUBCHAPTER D. CHOICES WORK ACTIVITIES

The Commission adopts the following amendments to Subchapter D:

§811.41. Job Search and Job Readiness Assistance

Section 811.41(b)(4), requiring daily supervision of participation in job search and job readiness activities, is removed and incorporated in §811.5(d).

Section 811.41(b)(5), requiring daily documentation of participation, is removed. New §811.5(d) sets forth the requirement to document participation on a monthly basis.

Section 811.41(b)(6), requiring Boards to ensure that job readiness activities that include allowable treatment or therapy activities necessary to assist Choices participants with seeking, obtaining, or retaining employment be certified by qualified medical or mental health professionals, is deleted. The final regulations at 45 CFR §261.2(g) no longer require certification of these activities--only documentation.

Section 811.41(d)(4) removes the requirement for substance abuse treatment, mental health treatment, and rehabilitation activities to be certified because the final regulations no longer require certification--only documentation. Boards are only required to ensure that the need for treatment and therapy activities is documented by a qualified medical, substance abuse, or mental health professional.

Certain paragraphs in §811.41 have been renumbered to accommodate additions or deletions.

§811.43. Subsidized Employment

Section 811.43(c)(1) removes the requirement for Boards to set a policy establishing the amount of wage subsidies and incorporates this requirement in §811.4(a)(2).

Section 811.43(e) adds language to allow Boards to place Choices participants in subsidized employment placements where the employer is not expected to retain the participant, if successful completion of the placement is expected to result in unsubsidized employment with a different employer.

The final regulations clarify that certain statements in the interim final regulations--i.e., that subsidized employment should be of limited duration, and that employers should be expected to hire participants at the end of such placements--were intended as recommendations, not requirements.

§811.44. On-the-Job Training

Section 811.44(b) adds language clarifying that on-the-job training may be provided on or off the work site. This change is made for consistency with the final regulations.

Section 811.44(d), requiring Boards to ensure the daily supervision of Choices participants enrolled in on-the-job training, is deleted. Paid work activities, including on-the-job training, are supervised by the employer and Boards are not required to ensure additional supervision.

New §811.44(d) requires that Boards ensure on-the-job training placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the subsidized placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

The final regulations clarify that certain statements in the interim final regulations--i.e., that on-the-job training should be of limited duration, and that employers should be expected to hire participants at the end of such placements--were intended as recommendations, not requirements.

Boards have informed the Agency of successful programs that provide Choices participants with experience and skills that then enable them to obtain unsubsidized employment with a different employer. Boards have found these programs advantageous to service delivery strategies and--if not for the restrictions in the interim final regulations--Boards would have continued the programs.

Section 811.44(e), requiring Boards to ensure that on-the-job training is documented in TWIST at least every two weeks, is deleted; new monthly documentation requirements are set forth in new §811.5(c).

Certain subsections in §811.44 have been relettered to accommodate additions or deletions.

§811.45. Work Experience

Section 811.45(f), requiring Boards to ensure that work experience activities are documented in TWIST at least every two weeks, is deleted, because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(d).

§811.46. Community Service

Section 811.46(f), requiring that Choices participants in community service programs be supervised daily, is removed and incorporated in new §811.5(d).

Section 811.46(g), requiring that community services activities be documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(d).

§811.47. Child Care Services to Choices Participants in Community Service

Section 811.47, providing child care services to Choices participants in community service as an allowed activity, is repealed. WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST Activity Codes," removes this activity effective October 1, 2007, because of verification requirements in the interim final regulations, guidance provided by ACF on Texas' Work Verification Plan, and the lack of participation in this activity. The verification required by HHS is not cost-effective based on the number of participants in this activity.

§811.48. Vocational Educational Training

Section 811.48(d) is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.48(e), requiring verification of good or satisfactory progress as determined by the educational institution, is removed and incorporated in new §811.5(e)(4).

Section 811.48(f), requiring that Choices participants in vocational education be supervised daily, is removed and incorporated in new §811.5(e)(5).

Section 811.48(g), requiring that vocational educational training be documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(e)(6).

§811.49. Job Skills Training

Section 811.49(f), allowing Boards to count supervised study or homework time toward a Choices participant's family participation requirement under specified circumstances, is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hours of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.49(g), requiring verification of good or satisfactory progress as determined by the educational institution, is deleted and incorporated in new §811.5(e)(4).

Section 811.49(h), requiring that Choices participants in job skills training be supervised daily, is deleted and incorporated in new §811.5(e)(5).

Section 811.49(i), requiring that Boards ensure job skills training is documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly documentation requirements are set forth in new §811.5(e)(6).

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50(a)(1) is removed and incorporated in §811.50(a) to clarify that educational services are not core activities for any Choices participants, including those under age 20.

Section 811.50(a)(2) is deleted and incorporated in §811.50(a) to clarify that educational services are not core activities for any Choices participants, including those under age 20.

This clarification is based on guidance from HHS during the process of approving Texas' Work Verification Plan, and does not change the work requirements for Choices participants under age 20.

Section 811.50(b)(1) removes the phrase "leading to a high school diploma or a GED credential" and replaces it with "as defined in §811.2(13)," the definition of secondary school.

Section 811.50(d) is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.50(e), requiring verification of good or satisfactory progress as determined by the educational institution, is removed and incorporated in new §811.5(e)(4).

Section 811.50(f), requiring that Choices participants in educational services be supervised daily, is removed and incorporated in new §811.5(e)(5).

Section 811.50(g), requiring that Boards ensure educational services are documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly documentation requirements are set forth in new §811.5(e)(6).

Comment: One commenter asked why educational services for teens are being changed to non-core hours. The commenter stated that this change in designation of school hours to a non-core activity for teen parents creates an unnecessary hardship for these already fragile family systems.

Response: This change is based on guidance from HHS during the process of approving Texas' Work Verification Plan and does not change the work requirements for Choices participants under age 20. When the original TANF regulations were released on April 12, 1999, the Agency interpreted the regulations to consider educational activities--including satisfactory school attendance--as core activities for teens without a high school diploma or GED. When Texas submitted its original work verification plan, HHS informed the Agency that hours of participation in educational activities, including satisfactory school attendance, were considered non-core hours for all participants.

It is important to note that this clarification does not change the required hours of participation for teens without a high school diploma or GED. If teens attend school satisfactorily, there is no set hourly requirement and no core-hour requirement to meet participation requirements. Teens who participate in other educational activities for an average of 20 hours per week also have no core-hour requirement.

However, teens who do not attend school satisfactorily, or who participate in other educational activities for less than an aver-

age of 20 hours per week, must participate a total of 30 hours per week, with 20 hours in core activities (educational activities, including school attendance, do not count as core activities) to meet participation requirements. If the teens have a child under age six, their work requirement is reduced to an average of 20 hours per week in core activities (educational activities, including school attendance, do not count as core activities).

In response to HHS' clarification, the Commission released Technical Assistance Bulletin 168 on December 27, 2007, which further explains the change and its impact, and gives examples such as the following:

--Teen heads of household who have not attained either their high school diploma or GED credential will still be included in the All Families Participation Rate numerator if they attend school satisfactorily or participate in other educational activities for an average of 20 hours per week.

--Teen heads of household who have a child under age six and participate in core activities for an average of 20 hours per week will be included in the All Families Participation Rate numerator.

--Two-parent household with two teen heads of household who have not attained their high school diploma or GED credential, both attending school satisfactorily, or participating in other educational activities for 20 hours per week will be included in the Two Parent Families Participation Rate numerator.

§811.51. Post-Employment Services

Section 811.51(e), giving Boards the option to provide post-employment services to certain former TANF recipients, sanctioned families, and conditional applicants, is removed and incorporated in new §811.4(b)(2).

Certain subsections in §811.51 have been relettered to accommodate additions or deletions.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

The Commission adopts the following amendments to Subchapter E:

§811.64. Work-Related Expenses

Section 811.64(b), requiring Boards to develop policies related to the methods and limitations for provision of work-related expenses, is removed and incorporated in new §811.4(a)(3).

Certain subsections in §811.64 have been relettered to accommodate additions or deletions.

COMMENTS WERE RECEIVED FROM:

Bruce P. Bower, Austin, Texas

Marsha Lindsey, Texoma Workforce Development Board

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

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.2 - 811.5

The amendments and new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted amendments and new rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.3. Choices Service Strategy.

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

- (1) determine employers' needs;
- (2) determine emerging and demand occupations; and
- (3) identify employment opportunities, which include those with a potential for career advancement that may assist a Choices eligible's progression toward self-sufficiency.

(b) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.

(2) Work First Design.

(A) The work first design:

(i) allows Choices participants to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking Choices participants with skills that match those job requirements identified by the employer.

(B) Boards shall provide Choices participants access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for TANF cash assistance.

(C) Post-employment services shall be provided in order to assist a Choices participant's progress toward self-sufficiency as described in §811.4(a)(1) and §811.51.

(D) In order to assist a Choices eligible's progress toward self-sufficiency:

(i) Boards shall provide Choices eligibles who are employed, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID, with information on available post-employment services; or

(ii) Boards may provide Choices eligibles with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51.

(E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:

(i) employee post-employment education or training;

(ii) employee child care, transportation or other support services available to obtain and retain employment; and

(iii) employer tax credits.

(F) Boards shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for TANF cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist Choices participants with job retention, career advancement, and reemployment, as defined

in §811.51. Post-employment services are a continuum in the Choices service strategy to support a Choices participant's job retention, wage gains, career progression, and progression to self-sufficiency.

(4) **Adult Services.** A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) **Teen Services.** A Board shall ensure that services for teen heads of household shall include secondary school, as defined in §811.2(13), and making the transition from school to employment, as described in §811.30 and §811.50.

(6) **Choices Eligibles with Disabilities.** A Board shall ensure that services for Choices eligibles with disabilities include reasonable accommodations to allow the Choices eligibles to access and participate in services, where applicable by law.

(7) **Target Populations.** A Board shall ensure that services are concentrated, as further defined in §811.4(d)(5) and §811.11(d), on the needs of the following:

(A) recipients who have six months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;

(B) recipients who have 12 months or less remaining of their 60-month federal TANF time limit, irrespective of any extension of time due to a hardship exemption; and

(C) recipients who are extended TANF recipients.

(8) **Local Flexibility.** A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

§811.4. Policies, Memoranda of Understanding, and Procedures.

(a) A Board shall establish policies regarding the following:

(1) A Choices service strategy, as defined in §811.3, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) utilize a work first design as referenced in §811.3(b)(2) to provide Choices participants access to the labor market; and

(C) assist former recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) The amount of wages subsidized for subsidized employment placements; and

(3) The methods and limitations for provision of work-related expenses.

(b) A Board may establish optional policies that:

(1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in Chapter 841 of this title to provide for Choices services for Choices participants and paid for with TANF funds; and

(2) make post-employment services available to:

(A) former recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

(c) A Board shall ensure that the following Memoranda of Understanding (MOUs) and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities to maximize their potential for success in employment;

(2) A local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission;

(3) A local-level MOU with the Texas Department of State Health Services for providing mental health and substance abuse services to Choices participants; and

(4) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

(d) A Board shall ensure that procedures are developed:

(1) to ensure that job development services are available to Choices participants. These services include:

(A) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting an employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) to ensure that job placement services are available to Choices participants. Job placement services shall include:

(A) identifying employers' workforce needs;

(B) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and

(C) matching the skills of the Choices participant pool to the hiring needs of local employers;

(3) to notify applicants and conditional applicants--in conjunction with HHSC--on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

(4) to notify HHSC of applicants and conditional applicants who contacted a Texas Workforce Center to request alternative WOAs;

(5) to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(b)(7)(A) and (B). Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices eligible's ability to participate, and targeted job development; and

(6) to determine a family's inability to obtain child care.

(e) If a Board elects to establish one or more of the optional policies described in subsection (b) of this section, the Board must ensure that corresponding procedures are developed for those policies.

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 September 9, 2008.

TRD-200804884

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

Effective date: September 29, 2008

Proposal publication date: June 27, 2008

For further information, please call: (512) 475-0829



SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11, 811.14, 811.16

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

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 Workforce Commission

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.21, 811.26, 811.27, 811.29, 811.34

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

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 Workforce Commission

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SUBCHAPTER D. CHOICES WORK ACTIVITIES

40 TAC §§811.41, 811.43 - 811.46, 811.48 - 811.51

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

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 Workforce Commission

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40 TAC §811.47

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

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 September 9, 2008.

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Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

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SUBCHAPTER E. SUPPORT SERVICES AND
OTHER INITIATIVES

40 TAC §811.64

The amendment is adopted under Texas Labor Code §301.0015 and §302.002(d), which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted amendment affects Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

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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Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

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For further information, please call: (512) 475-0829



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part 3

In accordance with §2001.039, Government Code, the Texas Alcoholic Beverage Commission (TABC) is serving notice of its intent to review rules under Title 16, Part 3, Chapter 47 of the Texas Administrative Code, relating to Blanket Rules.

The TABC invites comments from the public during the review process regarding whether the need for the chapter still exists. Amendments to or repeal of the existing chapter proposed by TABC will appear in the proposed rules section of the *Texas Register* for a 30-day comment period.

Any questions or comments should be directed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or joan.bates@tabc.state.tx.us.

TRD-200805050

Alan Steen
Administrator

Texas Alcoholic Beverage Commission
Filed: September 16, 2008

◆ ◆ ◆
In accordance with §2001.039, Government Code, the Texas Alcoholic Beverage Commission (TABC) is serving notice of its intent to review rules under Title 16, Part 3, Chapter 49 of the Texas Administrative Code, relating to Production of Alcoholic Beverages, specifically production practices in general.

The TABC invites comments from the public during the review process regarding whether the need for the chapter still exists. Amendments to or repeal of the existing chapter proposed by TABC will appear in the proposed rules section of the *Texas Register* for a 30-day comment period.

Any questions or comments should be directed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or joan.bates@tabc.state.tx.us.

TRD-200805051

Alan Steen
Administrator

Texas Alcoholic Beverage Commission
Filed: September 16, 2008

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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: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Administrative	Failure to return seal imprint and/or portrait	§133.97(e), (f); §137.31(a)	Reprimand/\$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/\$100.00
	Failure to respond to Board communications	§137.51(c)	Reprimand/\$500.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand/\$250.00
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/\$3,000.00
	Failure to exercise care and diligence in the practice of engineering	§137.55(b), §137.63(b)(6)	1 year probated suspension/\$1500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/\$3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/\$3,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/\$3,000.00
Licensing	Fraud or deceit in obtaining a license	§1001.452(2), §1001.453	Revocation/\$3,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year probated suspension/\$1,500.00
	Enter into a business relationship which is in violation of §137.77 (relating to Firm Compliance)	§137.51(d)	1 year probated suspension/\$1,000.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year probated suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful.	§137.57(a) and §137.57(b)(1) or (2)	2 year suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a) and §137.57(b)(3)	1 year probated suspension/\$1000.00
	Conflict of interest	§137.57(c), (d)	2 year suspension/\$2,500.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year probated suspension/\$2,500.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year probated suspension/\$2,500.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year probated suspension/\$2,500.00
	Offer or practice engineering while license is expired or inactive	§§137.7(a), 137.13(g)	1 year probated suspension/\$500.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year probated suspension/\$1,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/\$1,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year probated suspension/\$1,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year probated suspension/\$1,500.00
	Aiding and abetting unlicensed practice or other assistance	§§137.63(b)(3), 137.63(c)(1)	3 year probated suspension/\$3,000.00
	Failure to report violations of others	§137.55(c)	Reprimand/\$1,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/\$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/\$1,500.00
Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year probated suspension/\$1,500.00	
Competitive bidding with governmental entity	§137.53	Reprimand/\$1,500.00	

	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion.	§137.59(c)	2 year suspension/\$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension/\$2,500.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal	Failure to safeguard seal and/or electronic signature.	§137.33(d)	Reprimand/\$1,000.00
	Failure to sign, seal, date, or include firm identification on work	§137.33(e), (f), (h), (n), §137.35(a), (b)	Reprimand/\$500.00
	Alter work of another	§137.33(i), §137.37(3)	1 year probated suspension/\$1,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/\$1,000.00
	Practice or affix seal with expired or inactive license	§137.13(h), §137.37(2)	1 year probated suspension/\$500.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/\$3,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year probated suspension/\$1,500.00
	Sealing work endangering the public	§137.37(1)	Revocation/\$3,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/\$500.00
	Improper use of standards	§137.33(c)	Reprimand/\$500.00

Figure 22 TAC §139.35(d)

SUGGESTED SANCTION

VIOLATION	CITATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE
Offer and perform consulting engineering services without being registered	§1001.405; §137.77(a), (e)	Voluntary Compliance/ \$250.00	\$500.00	\$750.00
Offer and perform consulting engineering services while registration was expired	§1001.405; §137.77(d), (e)	\$500.00	\$750.00	\$1,200.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§1001.405; §137.77(a), (e)	\$100.00	\$500.00	\$1,000.00
Failure to include firm name and registration number on engineering work	§137.77(h)	Voluntary Compliance	\$500.00	\$1000.00
Failure to notify board of firm registration record modification	§137.73	Voluntary Compliance	\$250.00	\$500.00

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.

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 2008

The one percent local sales and use tax became effective July 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Buffalo Springs (Lubbock Co)	2152097	.010000	.077500

The one percent local sales and use tax will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Union Valley (Hunt Co)	2116127	.010000	.077500

A 1 1/2 percent local sales and use tax that includes the 1 percent city sales and use tax, an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code, and an additional 1/4 percent city sales and use tax for Property Tax Relief will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Fair Oaks Ranch (Bexar Co)	2015254	.015000	.077500
Fair Oaks Ranch/Bulverde Area Rural Library District (Comal Co)	6046603	.015000	SEE NOTE 1
Fair Oaks Ranch (Comal Co)	2015254	.015000	.082500
Fair Oaks Ranch (Kendall Co)	2015254	.015000	.082500

The 1/2% San Antonio MTA tax has been repealed and will be abolished effective September 30, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Fair Oaks Ranch (Bexar Co)	2015254	.015000	.077500
Fair Oaks Ranch/Bulverde Area Rural Library District (Comal Co)	6046603	.015000	SEE NOTE 1
Fair Oaks Ranch (Comal Co)	2015254	.015000	.082500
Fair Oaks Ranch (Kendall Co)	2015254	.015000	.082500

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be **abolished**, effective September 30, 2008, in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Nolanville (Bell Co)	2014095	.010000	.077500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Combes (Cameron Co)	2031094	.012500	.075000
Normangee (Leon Co)	2145024	.012500	.080000
Normangee (Madison Co)	2145024	.012500	.080000

An additional 1/4 percent city sales and use tax for Sports and Community Venue will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Groesbeck (Limestone Co)	2147022	.020000	.082500

An additional 1/8 percent city sales and use tax for property tax relief will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Sherman (Grayson Co)	2091028	.020000	.082500

An additional 1/4 percent city sales and use tax for property tax relief will become effective October 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Cottonwood Shores (Burnet Co)	2027054	.015000	.082500
Cross Plains (Callahan Co)	2030031	.020000	.082500
La Vernia (Wilson Co)	2247012	.015000	.082500

An additional 1/2 percent city sales and use tax for property tax relief will become effective October 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Lakeway (Travis Co)	2227061	.017500	.082500
Mount Enterprise (Rusk Co)	2201043	.020000	.082500
New Waverly (Walker Co)	2236024	.015000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Munday (Knox Co)	2138023	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Aledo (Parker Co)	2184053	.015000	.082500
Uhland (Caldwell Co)	2105068	.015000	.082500
Uhland (Hays Co)	2105068	.015000	.082500

An additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code plus an additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Idalou (Lubbock Co)	2152033	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be **reduced** to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2008 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Jasper (Jasper Co)	2121022	.020000	.082500

The additional 1/4 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** was **abolished**, effective September 30, and the **adoption** of an additional 1/4 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Graham (Young Co)	2252014	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** was **abolished**, effective September 30, and the **adoption** of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the cities listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Burnet (Burnet Co)	2027027	.020000	.082500
Rusk (Cherokee Co)	2037034	.015000	.082500

The additional 1/2 percent city sales and use tax for property tax relief will be **abolished**, effective September 30, and the adoption of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Tulia (Swisher Co)	2219016	.015000	.082500

An additional 3/4 percent city sales and use tax for improving and promoting economic and industrial development that includes an additional 3/8 percent as permitted under Article 5190.6, Section **4A** plus an additional 3/8 percent as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Southmayd (Grayson Co)	2091144	.020000	.082500

An additional 1 percent city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2 percent as permitted under Article 5190.6, Section **4A** plus an additional 1/2 percent as permitted under Article 5190.6, Section **4B** will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Wilmer (Dallas Co)	2057164	.020000	.082500

An additional 1 percent city sales and use tax that includes the adoption of a 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code, an additional 1/4 percent as permitted under Article 5190.6, Section **4A**, plus an additional 1/2 percent as permitted under Article 5190.6, Section **4B** for improving and promoting economic and industrial development will become effective October 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Goree (Knox Co)	2138041	.020000	.082500

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2008 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Anahuac Municipal Development District	5036534	.005000	SEE NOTE 2
East Montgomery Co Improvement District Economic Development Zone No. 1	5170647	.005000	SEE NOTE 3
Harris Co Emergency Services District No. 6	5101712	.005000	SEE NOTE 4
Harris Co Emergency Services District No. 12	5101721	.005000	SEE NOTE 5
Hays Co Emergency Services District No. 8	5105549	.005000	SEE NOTE 6
Spectrum Management District	5101696	.005000	SEE NOTE 7

A 1 percent special purpose district sales and use tax will become effective October 1, 2008 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Harris County Emergency Services District No. 4	5101703	.010000	SEE NOTE 8
Harris County Emergency Services District No. 10	5101730	.010000	SEE NOTE 9
Montgomery Co Emergency Services District No. 12-A	5170638	.010000	SEE NOTE 10

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2008 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Hays Co Emergency Services District No. 3	5105530	.015000	SEE NOTE 11
Las Damas Management District	5008501	.015000	SEE NOTE 12

A 2 percent special purpose district sales and use tax will become effective October 1, 2008 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Montgomery Co Emergency Services District No. 5	5170656	.020000	SEE NOTE 13

NOTE 1: The Fair Oaks Ranch/Bulverde Area Rural Library District combined area is located in the eastern portion of the city of Fair Oaks Ranch, located in Comal County. Contact the district representative at (830) 438-4864 for additional boundary information.

NOTE 2: The Anahuac Municipal Development District is located in the central portion of Chambers County. The district has the same boundaries as the city of Anahuac and its extraterritorial jurisdiction. The Anahuac Municipal Development District is located entirely within ZIP Code 77514. Contact the district representative at (409) 267-6682 for additional boundary information.

NOTE 3: The East Montgomery County Improvement District Economic Development Zone No. 1 is located in the southeastern portion of Montgomery County. The zone is located entirely within the East Montgomery County Improvement District, which has a special purpose district sales and use tax. The unincorporated area of Montgomery County in ZIP Code 77357 is partially located within the East Montgomery County Improvement District Economic Development Zone No. 1. Contact the district representative at (281) 354-4419 for additional boundary information.

NOTE 4: The Harris County Emergency Services District No. 6, which provides emergency medical services, is located in the east central portion of Harris County. The district does **not** include any area within the city of Houston or the Houston MTA. The district overlaps and contains most of the same territory as the Harris County Emergency Services District No. 12. The unincorporated areas of Harris County in ZIP Codes 77015 and 77049 are partially located in the Harris County Emergency Services District No. 6. Contact the district representative at (713) 453-7283 for additional boundary information.

NOTE 5: The Harris County Emergency Services District No. 12, which provides fire protection services, is located in the east-central portion of Harris County. The district does **not** include any area within the city of Houston or the Houston MTA. The district overlaps and contains most of the same territory as the Harris County Emergency Services District No. 6. The unincorporated areas of Harris County in ZIP Codes 77015 and 77049 are partially located in the Harris County Emergency Services District No. 12. Contact the district representative at (713) 652-6500 for additional boundary information.

NOTE 6: The Hays County Emergency Services District No. 8 is located in the eastern portion of Hays County, which has a county sales and use tax. The city of Hays is located entirely within the Hays County Emergency Services District No. 8. The district's boundaries for the imposition of sales and use tax **exclude** any area in the cities of Buda and Kyle. The unincorporated areas of Hays County in ZIP Codes 78610, 78640 and 78652 are partially in the Hays County Emergency Services District No. 8. Contact the district representative at (512) 295-2232 for additional boundary information.

NOTE 7: The Spectrum Management District is located in the southern portion of Harris County. The district is partially located within the city of Pearland, which has a city sales and use tax. The boundaries of the district are **not** the same as the Harris County portion of the city of Pearland. ZIP Code 77047 is partially located within the Spectrum Management District. Contact the district representative at (713) 860-6432 for additional boundary information.

NOTE 8: The Harris County Emergency Services District No. 4 is located in the northeastern portion of Harris County. The district includes a portion of the Houston MTA, which has a transit sales and use tax, but the district does not include any area within the city of Houston. The unincorporated area of Harris County in ZIP Code 77336 is partially located within the Harris County Emergency Services District No. 4. Contact the district representative at (713) 984-8222 for additional boundary information.

NOTE 9: The Harris County Emergency Service District No. 10 is located in the north-central portion of Harris County. The district includes a portion of the Houston MTA, which has a transit sales and use tax, but the district does **not** include any area within the city of Houston. The district's boundaries for the imposition of sales and use tax **excludes** any area within the district which is responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city and within in the Aldine Community Improvement District. The unincorporated areas of Harris County in ZIP Codes 77032, 77338 and 77396 are partially located within the Harris County Emergency Services District No. 10. Contact the district representative at (713) 984-8222 for additional boundary information.

NOTE 10: The Montgomery County Emergency Services District No. 12-A is the unincorporated area of the original district, which is located in the northeastern portion of Montgomery County. District 12-A is partially located within the East Montgomery County Improvement District, which has a special purpose district sales tax. The unincorporated areas of Montgomery County in ZIP Codes 77303, 77306 and 77328 are partially located in the Montgomery County Emergency Services District No.12-A. Contact the district representative at (936) 264-1313 for additional boundary information.

NOTE 11: The Hays County Emergency Services District No. 3 is located in the southern portion of Hays County, which has a county sales tax. The district's boundaries for the imposition of sales and use tax **exclude** any area in the cities of San Marcos and Wimberley. The unincorporated areas of Hays County in ZIP Codes 78666, 78676, 78130, 78640, 78623 and 78656 are partially located in the Hays County Emergency Services District No. 3. Contact the district representative at (512) 754-7963 for additional boundary information.

NOTE 12: The Las Damas Management District is located in the north-central portion of Austin County, which has a county sales and use tax. The unincorporated area of Austin County in ZIP Code 77426 is partially located within the Las Damas Management District. Contact the district representative at (713) 860-6432 for additional boundary information.

NOTE 13: The Montgomery County Emergency Services District No. 5 is located in the east-central portion of Montgomery County. The unincorporated areas of Montgomery County in ZIP Codes 77302 and 77306 are partially located in the Montgomery County Emergency Services District No. 5. Contact the district representative at (936) 446-2900 for additional boundary information.

TRD-200805035
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: September 15, 2008



Notice of Contract Amendment

Pursuant to Chapters 403 and Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the amendment of the following consulting contract:

An existing contract with AKF Consulting LLC is amended. The original total amount of the contract was not to exceed \$50,000.00. The original term of the contract was November 27, 2007 through December 31, 2008, with option to renew for two (2) additional one (1) year terms, one year at a time. The amendment adds \$25,000.00 to the amount for a new total of not to exceed \$75,000.00, and extends the term of the contract through December 31, 2009, with option to renew for one (1) additional one (1) year term.

The notice of request for proposals was published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7539) (RFP #181a). The Notice of Award was published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 10084).

The contractor provides consulting and technical advice and assistance to the Comptroller and the Texas Prepaid Higher Education Tuition Board in the administration of the new Texas Tuition Promise Fund.

TRD-200804964

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 12, 2008



Notice of Contract Amendment

The Comptroller of Public Accounts, State Energy Conservation Office (SECO) announces this notice of amendment of contracts for energy engineering services for the Local Government Program.

Three contracts were awarded to the following:

1. Carter & Burgess, Inc., 777 Main Street, Fort Worth, Texas 76102. The total amount of the contract is not to exceed \$300,000.00. The original term of the contract was February 11, 2008 through August 31, 2008. The amendment extends the term of the contract through August 31, 2009.
2. Texas Energy Engineering Services, Inc., 1301 Capital of Texas Highway, Austin, Texas 78746. The total amount of the contract is not to exceed \$200,000.00. The original term of the contract was February 11, 2008 through August 31, 2008. The amendment extends the term of the contract through August 31, 2009.
3. ESA Energy Systems Associates, Inc., 100 East Main, Suite 201, Round Rock, Texas 78664. The total amount of the contract is not to exceed \$200,000.00. The original term of the contract is February 11, 2008 through August 31, 2008. The amendment extends the term of the contract through August 31, 2009.

The notice of request for proposals (RFP #180f) was published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6656). The notice of award was published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1620).

TRD-200804965

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 12, 2008



Notice of Contract Awards

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract awards in connection with the Request for Proposals (RFP #187a) for pooled consulting services

to assist the Comptroller with Appraisal Standards Reviews of Selected County Appraisal Districts.

Comptroller announces that seven (7) contracts were awarded to the following:

1. Jimmie Neal Yeats dba Jim Yeats Consulting, 5604 85th Street, Lubbock, Texas 79424-4624. The total amount under all master contracts awarded is not to exceed \$350,000.00. The term of this contract is September 10, 2008 through August 31, 2009;
2. O'Connor Consulting, Inc., 3817 Evesham Drive, Plano, Texas 75025-3819. The total amount under all master contracts awarded is not to exceed \$350,000.00. The term of the contract is September 10, 2008 through August 31, 2009;
3. Williams Data Services, 4124 Rustle Cove, Georgetown, Texas 78628. The total aggregate amount under all master contracts is not to exceed \$350,000.00. The term of the contract is September 10, 2008 through August 31, 2009;
4. Daniel J. Garrett, 1411 Lazy Lane, Longview, Texas 75604. The total aggregate amount under all master contracts is not to exceed \$350,000.00. The term of the contract is September 10, 2008 through August 31, 2009;
5. Wiley Rudasill, 425 Oak Crest Lane, Georgetown, Texas 78628. The total amount under all master contracts awarded is not to exceed \$350,000.00. The term of the contract is September 10, 2008 through August 31, 2009;
6. Thomas Wade, 341 Jefferson, Cat Spring, Texas 78933. The total amount under all master contracts awarded is not to exceed \$350,000.00. The term of the contract is September 10, 2007 through August 31, 2009; and
7. AMF Appraisal Group Inc., 780 Clepper, Suite 204, Montgomery, Texas 77356. The total aggregate amount under all master contracts is not to exceed \$350,000.00. The term of the contract is September 10, 2008 through August 31, 2009.

The notice of request for proposals (RFP #187a) was published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 5034). The reports are due on or before August 31, 2009.

TRD-200804931

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 11, 2008



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/22/08 - 09/28/08 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/22/08 - 09/28/08 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

TRD-200805045

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 16, 2008

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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 Associated Credit Union of Texas, Deer Park, 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 First Service Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Baxter & Schwartz who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from TCC Credit Union, Dallas, 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 TCC CU office located at 4200 South Freeway, Fort Worth, Texas, to be eligible for membership in the credit union.

An application was received from the Cooperative Teachers Credit Union, Tyler, Texas to expand its field of membership. The proposal would permit persons who live work, worship, or attend school within Smith 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.tcud.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-200805059
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 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 application(s):

Application(s) for a merger or Consolidation--Approved

Dallas Western Union Employees Credit Union (Dallas) and Corner Stone Credit Union (Lancaster)

TRD-200805060

Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2008

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Texas Education Agency

Notice of Correction: Request for Applications (RFA) Concerning the Rural Technology Grant Pilot Program, Cycle 2 (RFA #701-08-118)

The Texas Education Agency (TEA) published Request for Applications Concerning the Rural Technology Grant Pilot Program, Cycle 2, in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5394).

The TEA is amending the deadline for receipt of applications. The due date has been extended to October 2, 2008. This correction reflects a change from the original due date of September 18, 2008.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200805067
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 17, 2008

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Notice of Correction: Request for Applications (RFA) Concerning the Collaborative Dropout Reduction Pilot Program, Cycle 2 (RFA #701-08-133)

The Texas Education Agency (TEA) published Request for Applications Concerning the Collaborative Dropout Reduction Pilot Program, Cycle 2, in the July 25, 2008, issue of the *Texas Register* (33 TexReg 6000).

The TEA is amending the deadline for receipt of applications. The due date has been extended to November 4, 2008. This correction reflects a change from the original due date of September 25, 2008.

Further Information. For clarifying information about the RFA, contact Chris Caesar, Division of State Initiatives, TEA, (512) 936-6434.

TRD-200805069
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 17, 2008

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Notice of Correction: Request for eGrants Applications (RFA) Concerning Investment Capital Fund Grant Program, Cycle 18, School Years 2008-2009 and 2009-2010 (RFA #701-08-113)

The Texas Education Agency (TEA) published Request for eGrants Applications Concerning Investment Capital Fund Grant Program, Cycle 18, School Years 2008-2009 and 2009-2010, in the July 25, 2008, issue of the *Texas Register* (33 TexReg 6001).

The TEA is amending the deadline for receipt of applications. The due date has been extended to October 7, 2008. This correction reflects a change from the original due date of September 25, 2008.

Further Information. For clarifying information about the RFA, contact Carlos Garza, Division of Discretionary Grants, TEA, (512) 463-9269. TRD-200805068
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 17, 2008



Request for Applications Concerning Intensive Technology-Based Academic Intervention Pilot Program, Cycle 2, School Years 2008-2009 through 2010-2011

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-121 from independent school districts and open-enrollment charter schools that identified at least 45 percent of students in the district as economically disadvantaged for each of the three preceding school years (2007-2008, 2006-2007, and 2005-2006). A list of applicants eligible for this grant is posted on the TEA Grant Opportunities website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. Each campus that the applicant school district or open-enrollment charter school selects for inclusion in the grant program must have identified at least 45 percent of students enrolled in Grades 9-12 as being at risk of dropping out of school, as described by Texas Education Code (TEC), §29.081(d), for the 2007-2008 school year. In addition, applicants must meet the following requirements: (1) school districts and open-enrollment charter schools must have been in existence for at least three school years, and (2) a school district or open-enrollment charter school applying for this grant must be financially viable, as determined through fiscal review by the TEA Division of Financial Audits. Shared services arrangements consisting of no more than three school districts and/or open-enrollment charter schools within a shared geographical region are also eligible to apply. Grantees that received funding from the Intensive Technology-Based Academic Intervention Pilot Program, Cycle 1, may apply for Cycle 2 funding, but must use Cycle 2 funds to serve a different grade level and/or different subject.

Description. The purpose of the Intensive Technology-Based Academic Intervention Pilot Program, Cycle 2, is to support school districts and open-enrollment charter schools in providing students in Grades 9-12 identified as being at risk of dropping out of school with individual technology-based supplemental instruction in the foundation curriculum areas of English language arts, mathematics, science, and/or social studies. Instructional techniques and technology implemented through this program must be founded on scientifically based research regarding postsecondary readiness.

The primary goal of the Intensive Technology-Based Academic Intervention Pilot Program is to provide at-risk students with individual access to technology-based supplementary instruction to improve their achievement. Additional goals of the program include supporting eligible campuses in providing teachers and administrators with professional development, training, and mentoring regarding the uses of technology-based supplementary instruction and collecting information on best practices related to technology-based supplemental instruction.

The Intensive Technology-Based Academic Intervention Pilot Program, Cycle 2, is intended to serve students who have been identified as being at risk of dropping out of school, as described by TEC, §29.081(d). However, grantees may use grant awards to fund a campus-wide program as long as the program's primary purpose of serving at-risk students is not defeated.

Dates of Project. The Intensive Technology-Based Academic Intervention Pilot Program, Cycle 2, will be implemented during the 2008-2009, 2009-2010, and 2010-2011 school years. Applicants should plan for a starting date of no earlier than March 1, 2009, and an ending date of no later than May 31, 2011.

Project Amount. Funding will be provided for approximately 14-20 projects. Each project will receive a maximum of \$50 per student served during the grant period. Project funding in subsequent periods will be based on satisfactory progress of the first-period objectives and activities, on general budget approval by the commissioner of education, and on appropriations by the state legislature.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Due to the high cost of printing and mailing RFAs, they will no longer be available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, November 13, 2008, to be eligible to be considered for funding.

TRD-200805066
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 17, 2008



Education Service Center Region 10

Request for Applications: Texas Support for Homeless Education Program, School Years 2009-2010 through 2011-2012

Filing Date. September 17, 2008.

Filing Authority. The availability of grant funds under Request for Applications (RFA) #ESCR-10/H2009-12 is authorized by the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, Public Law 107-110.

Eligible Applicants. The Region 10 Education Service Center (Region 10 ESC) is requesting applications from school districts or cooperatives of school districts, regional education service centers, open enrollment charter schools, and county departments of education to facilitate the enrollment, attendance, and school success of homeless children and youth.

Description. Applicants should describe plans to provide tutoring, counseling, social work services, transportation, and other assistance that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include data on the impact of the project on the enrollment, school attendance, and the academic success of homeless students.

Dates of Project. The Texas Support for Homeless Education Program grants are funded in three year competitive grant cycles. The first year of the next cycle will be implemented during the 2009-2010 school year. Applicants should plan for a starting date no earlier than September 1, 2009.

Project Amount. Approximately \$4.45 million will be provided for an unspecified number of projects; the number of projects will depend on the number of applicants. Project grant awards will range from \$20,000 to \$235,000 and are dependent upon the number of homeless students and the percentage of homeless students in the districts to be served. Project funding in the second and third years will be based on satisfactory progress of the first- and second-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, the state legislature, and the availability of funding. This project is funded 100% from McKinney-Vento Homeless Education Assistance Act federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The Region 10 ESC reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Region 10 ESC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit Region 10 ESC to pay any costs before an application is approved. The issuance of this RFA does not obligate Region 10 ESC to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA #ESCR-10/H2009-12 may be downloaded from the Texas Homeless Education Office website at <http://www.utdanacenter.org/theo>. The application may also be obtained by writing The University of Texas at Austin, Charles A. Dana Center, Texas Homeless Education Office, 2901 North IH-35, Suite 2.246, Austin, Texas 78722-2348, or by calling 1-800-446-3142 or (512) 475-9702 (in Austin). Please refer to RFA #ESCR-10/H2009-12 in your request.

Further Information. For clarifying information about the RFA, contact the Texas Homeless Education Office at 1-800-446-3142 or (512) 475-9702.

Bidder's Conference. Region 10 is holding a bidder's conference for those interested in additional information about this RFA on October 10, 2008, from 9:30 a.m. until 3:30 p.m., in Room 170 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. There is no fee to attend this meeting, however, attendees assume all costs incurred for their attendance at this meeting; should they be awarded a grant under this program, costs to attend this bidder's conference may not be charged to the grant. Registration is not required; however, to ensure sufficient materials, participants are requested to send an e-mail to babawawa@austin.utexas.edu stating the names and affiliations of all who will attend the bidder's conference. This bidder's conference will be videotaped; those unable to attend may request a DVD of the proceedings by calling Janie Phillips, Administrative Assistant, Texas Homeless Education Office, at 1-800-446-3142, or by sending an e-mail to Barbara James, Director, Texas Homeless Education Office, at babawawa@austin.utexas.edu. Questions regarding the bidder's conference or the TEXSHEP grant may be directed to Barbara James at 1-800-446-3142 or (512) 475-8765, or by e-mail at babawawa@mail.utexas.edu.

Deadline for Receipt of Application. Applications must be received in the Region 10 ESC business office by 4:30 p.m. (Central Daylight Savings Time), Wednesday, December 17, 2008, to be considered.

Issued in Richardson, Texas on September 17, 2008.

TRD-200805062

Wilburn O. Echols, Jr.

Executive Director

Education Service Center Region 10

Filed: September 17, 2008

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Texas Commission on Environmental Quality

Executive Director's Response to Public Comment on General Permit Number TXG830000

The executive director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on General Permit Number TXG830000. Prior to issuing a general permit, the executive director must comply with the provisions of the Texas Water Code (TWC), §26.040(d) and 30 TAC §205.3(e). Both provisions require the executive director to respond to all timely filed public comments. The executive director must make these responses publicly available and must file them with the commission's Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit.

The Office of the Chief Clerk timely received comment letters from the Texas Oil and Gas Association (TxOGA) and from the Association of Electric Companies of Texas, Inc. (AECT). Baker Botts, L.L.P., AECT, and Center Point Energy filed preliminary comments. This Response addresses all timely filed public comments received. In certain instances, the general permit was revised in response to comments received. If you need more information about this general permit or the general wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Introduction

General Permit Number TXG830000 would amend and renew authorization for surface discharges of waters contaminated by petroleum fuel or petroleum substances into or adjacent to waters in the state. This general permit is proposed under TWC, §26.040. The commis-

sion is authorized to "issue a general permit to authorize the discharge of waste into or adjacent to waters in the state by category of dischargers in a particular geographical area of the state or in the entire state if the dischargers in the category discharge storm water or: (1) engage in the same or substantially similar types of operations; (2) discharge the same types of waste;" (3) are subject to the same effluent limitations or operating conditions requirements; (4) are subject to similar monitoring requirements; and (5) are more appropriately regulated under a general permit. A permit issued pursuant to TWC, §26.040 must be readily enforceable, provide for adequate compliance monitoring, and cannot "include a discharge of pollutants that will cause significant adverse effects to water quality."

Procedural Background

The Office of the Chief Clerk received the permit file on May 4, 2007. In accordance with 30 TAC §205.3(a)(2), the Notice of Proposed Amendment of General Permit Authorizing the Discharge of Wastewater was published in the *Texas Register*, May 18, 2007; *Dallas Morning News*, May 15, 2007; *Amarillo Globe-News*, May 14, 2007; *El Paso Times*, May 14, 2007; *Houston Chronicle*, May 14, 2007; *The Monitor*, May 14, 2007; and *San Antonio Express News*, May 14, 2007. Mailed notice was also provided in accordance with 30 TAC §205.3(b). The original comment period ended on June 18, 2007. Subsequently, the general permit was re-noticed to clarify there were additional changes being made to the 2002 version of the general permit. Notice of the general permit was published in the *Texas Register*, February 8, 2008; *Dallas Morning News*, February 1, 2008; *Amarillo Globe-News*, February 1, 2008; *El Paso Times*, February 1, 2008; *Houston Chronicle*, February 1, 2008; *The Monitor*, February 1, 2008; and *San Antonio Express News*, February 1, 2008. The comment period ended on March 10, 2008. No additional comments were received during the second comment period.

COMMENTS AND RESPONSES

COMMENT NUMBER 1:

AECT comments that it supports the renewal and the draft amendments that have been published.

RESPONSE NUMBER 1:

The executive director acknowledges AECT's support for the renewal of General Permit Number TXG830000 and the proposed draft permit. No changes were requested or made based on this comment.

COMMENT NUMBER 2:

TxOGA requests that the definition of "utility vault" be expanded to include pipelines. They also requested that Part III, Section C, "Discharges from Utility Vaults," be changed to include pipelines.

RESPONSE NUMBER 2:

After requesting and receiving additional information from TxOGA, the executive director agrees that discharges from "pipeline vaults" can be included in the general permit. These discharges will not be covered under the definition of a "utility vault" but will be covered as discharges from "pipeline vaults."

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

CHANGE NUMBER 1:

The following definition for a "pipeline vault" was added to Part I. Definitions:

"*Pipeline vault* - Any structure utilized to house pipelines for access to those pipelines."

Part III. Section C., "Discharges from Utility Vaults" was changed as follows:

"Section C. Discharges from Utility Vaults and *Pipeline Vaults*

Discharges from telephone, electric, gas, cable, *pipeline vaults*, or other telecommunication utility vaults, shall comply with the following requirements:"

A new Part III. Section C.8. was added as follows:

"8. Discharges from pipeline vaults do not include discharges of water contaminated by petroleum product from the cleaning, repair, or testing of a pipeline."

TRD-200805043

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 16, 2008



Notice - Extension of Comment Period on the Proposed Amendments to 30 TAC Chapter 291

In the August 22, 2008, issue of the *Texas Register* (33 TexReg 6736), the Texas Commission on Environmental Quality (commission) published a notice of proposed amendments to Chapter 291, Utility Regulations. The deadline date for written comments was published as September 22, 2008 in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6736).

The commission has extended the deadline for receipt of written comments to October 6, 2008, for the proposed amendments to Chapter 291.

Comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-014-291-PR. To view rules, please visit http://www.tceq.state.tx.us/nav/rules/proposal_adapt.html. For further information or questions concerning this proposal, please contact Tammy Benter, Utilities and Districts Section, Water Supply Division, at (512) 239-6136.

TRD-200805072

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 17, 2008



Notice of District Petition

Revised Notices issued September 11, 2008.

Texas Commission on Environmental Quality (TCEQ) Internal Control No. 06182008-D04; FM-548 & High Plains Trail - 1237, LLLP, (Petitioner) filed a petition for creation of Rockwall County Water Control and Improvement District No. 1 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 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 Petitioners are the owners of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder,

Legacy Land Bank, FLCA, on the property to be included in the proposed District; (3) the proposed District will contain approximately 616.211 acres located in Rockwall County, Texas; and (4) and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. 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 \$38,550,000.

TCEQ Internal Control No. 06182008-D05; FM-548 & High Plains Trail - 1237, LLLP, (Petitioner) filed a petition for creation of Rockwall County Water Control and Improvement District No. 2 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 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 Petitioners are the owners of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, Legacy Land Bank, FLCA, on the property to be included in the proposed District; (3) the proposed District will contain approximately 619.511 acres located in Rockwall County, Texas; and (4) and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. 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 \$37,000,000.

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 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 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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the 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.

TRD-200805075

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 17, 2008



Notice of Receipt of Application for a Municipal Solid Waste Management Facility

APPLICATION IESI TX Landfill LP, 2301 Eagle Parkway, Suite 200, Fort Worth, Tarrant County, Texas 76177, (817) 632-4000, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to the permit for a vertical expansion above the previously authorized Subtitle D lined areas and to reduce the horizontal footprint of the waste disposal area in remaining areas to be developed at the existing IESI East Texas Regional Landfill. The facility is located approximately 5.5 miles southeast of Henderson at 5155 FM 2867 East, Rusk County, Texas. The TCEQ received the application on August 6, 2008. The permit application is available for viewing and copying at the Rusk County Library, 106 East Main Street, Henderson, Texas 75652, (903) 657-8557.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; 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.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from IESI TX Landfill LP at the address stated above or by calling Mr. Joe Viceli, IESI Regional Environmental Manager at (817) 632-4000, or the Applicant's Technical Representative, Kenneth Welch, P.E. at (817) 563-1144.

TRD-200804924

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: September 10, 2008



Notice - Revised Public Hearing Dates and Extension of Comment Period on the Proposed Amendments to 30 TAC Chapter 117 and to the State Implementation Plan

In the September 5, 2008, issue of the *Texas Register* (33 TexReg 7443), the Texas Commission on Environmental Quality (commission) published a notice of proposed amendments to Chapter 117, Control of Air Pollution from Nitrogen Compounds and corresponding revisions to the state implementation plan (SIP). The deadline date for written comments was published as October 6, 2008 in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7620).

Due to the aftereffects of Hurricane Ike and to accommodate those affected by the hurricane, the public hearings on the proposed revisions to 30 TAC Chapter 117 and corresponding revisions to the SIP previously scheduled for September 30 and October 1, have been rescheduled for October 23, 2008, at 2:00 p.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle, Building E, Room 201S in Austin. Commission staff will be available 30 minutes prior to the hearing to informally

discuss the proposal. The commission has extended the deadline for receipt of comments to October 24, 2008.

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at www5.tceq.state.tx.us/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-008-117-EN. Comments must be received by October 24, 2008. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Ray Schubert, Air Quality Planning Section, at (512) 239-6615.

TRD-200805073

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 17, 2008



Notice of Water Quality Applications

The following notices were issued during the period of August 21, 2008 through September 5, 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

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0013600001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located at 3946 1/2 Marzia Street, approximately 2,000 feet from its intersection with Almeda Road (Farm-to-Market Road 521) in Fort Bend County, Texas.

CITY OF CRYSTAL CITY has applied for a renewal of TPDES Permit No. WQ0010098001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at the terminus of Plant Street, approximately 0.2 mile northwest of the intersection of Plant Street and U.S. Highway 83, approximately two blocks west of the intersection of State Highway 393 and U.S. Highway 83, northwest of the City of Crystal City in Zavala County, Texas.

CITY OF FRANKLIN has applied for a renewal of TPDES Permit No. WQ0010440001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located 1,000 feet southeast of U.S. Highway 79 and one mile southwest of the intersection of U.S. Highway 79 and Farm-to-Market Road 46 in the City of Franklin in Robertson County, Texas.

CITY OF GEORGETOWN has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Permit No. WQ0014232001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 100 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approxi-

mately 5.8 miles west of Interstate Highway 35 and 1.05 miles north of State Highway 29 in Williamson County, Texas.

CITY OF GODLEY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014887001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. Authorization to discharge was previously permitted by expired Permit No. WQ0010542001. The facility is located adjacent to West Nolan Creek, approximately 600 feet south of the intersection of State Highway 171 and Farm-to-Market Road 930, in the City of Godley, in Johnson County, Texas.

CITY OF KOSSE has applied for a renewal of TPDES Permit No. WQ0011405001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 150 southeast of the intersection of Jackson and Tulip streets in the City of Kosse in Limestone County, Texas.

CITY OF MCALLEN has applied for a major amendment to TPDES Permit No. WQ0010633004 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 8,000,000 gallons per day to an annual average flow not to exceed 18,000,000 gallons per day. The facility is located on Sprague Road approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107 in Hidalgo County, Texas.

CITY OF MISSOURI CITY has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0013873001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 3,000,000 gallons per day to an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 6310 Oilfield Road, approximately 2,300 feet southeast of the intersection of Oilfield Road and Steep Bank Creek and approximately 1.0 mile southwest of the intersection of Oilfield Road and State Highway 6 in Fort Bend County, Texas.

CITY OF MORGAN'S POINT has applied for a renewal of TPDES Permit No. WQ0010779001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at the southwest corner of the intersection of Barbours Cut Boulevard and North Wilson Street in Harris County, Texas.

CITY OF PEARLAND has applied for a major amendment to TPDES Permit No. WQ0010134007 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 4,000,000 gallons per day to an annual average flow not to exceed 6,000,000 gallons per day. The current and draft permits also authorize the disposal of treated domestic wastewater via irrigation on 18 acres of land. The facility is located approximately 0.25 mile east and one mile north of the intersection of County Road 101 (Bailey Road) and County Road 103 (Harkey Road) in the City of Pearland in Brazoria County, Texas.

GULF COAST UTILITY CO INC has applied for a renewal of TPDES Permit No. WQ0014497001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located 6,500 feet southwest of the intersection of State Highway 6 and State Highway 288, approximately 1,000 feet south of Brazoria County Road in Brazoria County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 1 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011630001, which authorizes the discharge of treated domestic wastewater at an annual average flow not

to exceed 1,500,000 gallons per day. The facility is located on the south side of LondonWay Drive, approximately 400 feet east of the intersection of London Way Drive and Kuykendahl Road in Harris County, Texas.

LATHAM SPRINGS BAPTIST ENCAMPMENT INC has applied for a renewal of Permit No. WQ0013820001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 47,400 gallons per day via surface irrigation of 15 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 5,000 feet northwest of the intersection of Farm-to-Market Road 1304 and Farm-to-Market Road 2114, approximately 8,000 feet southeast of the community of Smiths Bend and 6.25 miles southeast from the Lake Whitney Dam in Hill County, Texas.

RANDY EARL WYLY has applied for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003160000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing Dairy facility from 1,500 head to a maximum capacity of 3,000 head, of which 3,000 head are milking cows. The facility is located on the west side of County Road 209, approximately 1.5 miles south of the intersection of County Road 209 and U.S. Highway 67. This intersection is approximately 7 miles southeast of Stephenville, in Erath County, Texas.

REALTY CAPITAL BELMONT LTD has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed TPDES Permit No. WQ0014894001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility will be located approximately 7,500 feet west and 1,500 feet north of the intersection of Interstate Highway 35 West and Old Justin Road, about 10 miles southwest of Denton, in Denton County, Texas.

TAMARRON LAKES LP has applied for a renewal of TPDES Permit No. WQ0014692001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility will be located approximately 4,200 feet west and 1,200 feet north of the intersection of Farm-to-Market Road 1463 and Fulshear Katy Road in Fort Bend County, Texas.

TEXAS MUNICIPAL POWER AGENCY which operates the Gibbons Creek Steam Electric Station, a coal-powered, steam electric power generating facility, has applied for a major amendment to TPDES Permit No. WQ0002120000 to authorize to authorize less stringent effluent limitations for total aluminum based on the result of water-effect ratio (WER) study. The current permit authorizes the discharge of low volume wastewater, ash transport water, coal pile runoff, previously monitored effluent (treated domestic wastewater and metal cleaning wastewater), and storm water on an intermittent and flow variable basis via Outfall 001; low volume wastewater, coal pile runoff, and storm water on an intermittent and flow variable basis via Outfall 002; landfill leachate at a daily maximum flow not to exceed 32,000 gallons per day via Outfall 003; and once through cooling water and auxiliary non-contact cooling water at a daily average flow not to exceed 511,000,000 gallons per day via Outfall 004. The application also includes a request for a temporary variance to the existing water quality standards for the water quality based criteria for total aluminum for Gibbons Creek Reservoir in Segment No. 1209 of the Brazos River Basin. The variance was requested to allow time for the review of the completed WER, if necessary. The facility is located adjacent to Gibbons Creek Reservoir, approximately 2.5 miles north (via Farm-to-Market Road 244) of the intersection of State Highway 30 and Farm-to-Market Road 244, in the Town of Carlos, Grimes County, Texas.

The following do not require publication in a newspaper. Written comments may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the TCEQ permit issued to ROCKY CREEK WASTEWATER UTILITY permit WQ0014664001 to include a monitoring frequency and sampling type for Ammonia Nitrogen. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 125,500 gallons per day via surface irrigation of 50 acres of public access land. The facility and disposal site will be located approximately 5,000 feet south of Hamilton Pool Road (Farm-to-Market Road 3238) and 2,250 feet west of Crumley Ranch Road in Travis County, Texas. The facility and disposal site will be located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin.

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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200804923

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 10, 2008



Notice of Water Quality Applications

The following notices were issued during the period of August 28, 2008 through September 17, 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

AIR PRODUCTS LLC which operates La Porte Plant, which produces industrial gases, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001280000, which authorizes the discharge of process wastewater, utility wastewater, laboratory test solution water, hydrostatic test water, and storm water at a daily average flow not to exceed 500,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The facility is located at 10202 Strang Road, approximately 1,500 feet northwest of the intersection of State Highway 225 and Miller Cutoff Road, bordered on the north by Strang Road, on the east by Miller Cutoff Road, on the south by the Union Pacific railroad tracks, and on the west by the Houston Light and Power right way power lines, northwest of the City of La Porte, Harris County, Texas.

ARJEN WILHELMUS GEIJSEL Permit No. WQ0003077000 has applied for a Concentrated Animal Feeding Operation (CAFO) amendment, to authorize the applicant to expand an existing dairy facility by increasing the land application acreage from 300 acres to 411 acres. The maximum capacity of 3,000 head, of which 2,800 head are milking cows, will remain unchanged. The facility is located on the east side of Farm-to-Market Road 219 approximately 2.25 miles south of the inter-

section of Farm-to-Market Road 219 and Farm-to-Market Road 1702 in Erath County, Texas.

BELLE OAKS WATER AND SEWER CO INC has applied for a renewal of TPDES Permit No. WQ0013565001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. The facility is located approximately 1.5 miles north of the intersection of State Highway 73 and Country Club Road and approximately 2.9 miles northeast from the intersection of State Highway 73 and La Bella Road in Jefferson County, Texas.

BROCK INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. WQ0013798001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day via evaporation and surface irrigation of 20 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 100 Grindstone Road, entirely within Brock Independent School District property, situated on the northwest corner of Farm-to-Market Road 1189 and an unnamed County Road and approximately 2 miles south of Interstate Highway 20 in Parker County, Texas. The wastewater treatment facility and disposal site are located in the drainage area of the Brazos River Below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin. No discharge of pollutants into water in the State is authorized by this permit.

CHEVRON PHILLIPS CHEMICAL COMPANY LP which operates Pasadena Plastics Complex, has applied for a major amendment to TPDES Permit No. WQ0000815000 to correct the monitoring frequency for pH at Outfalls 003 and 004; and to clarify the description of industrial activities associated with storm water runoff to Outfalls 003 and 004. The current permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, sanitary wastewater, storm water and hydrostatic test water at a daily average flow not to exceed 4,300,000 million gallons per day via Outfall 001; and the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The facility is located at 1400 Jefferson Road, on the south side of the Houston Ship Channel and approximately 0.5 mile west of the mouth of Green's Bayou, Harris County, Texas.

CLOVERCREEK MUNICIPAL UTILITY DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0014907001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility was previously permitted under TPDES Permit No. 13115-001, which expired at midnight, March 1, 2008. The plant site is located at 29331 Nichols-Sawmill Road, approximately 2 miles south of Magnolia, Texas (south of the intersection of County Place Road and Nichols-Sawmill Road) in Montgomery County, Texas.

HAMSHIRE FANNETT INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012098001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located on the Fannett Campus approximately 1,500 feet south - southwest of the intersection of State Highway 124 and Farm-to-Market Road 365 in Jefferson County, Texas.

JARRELL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. WQ00141010001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,100 gallons per day via irrigation on 1.7 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located west of Jarrell on the north side of Farm-to-Market Road 487, approx-

imately one mile west of the intersection of Farm-to-Market Road 487 and U.S. Interstate Highway 35 in Williamson County, Texas

LBC HOUSTON LP which operates Bayport Terminal, has applied for a renewal of TPDES Permit No. WQ0002590000, which authorizes the discharge of utility wastewater and storm water on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 11807 Port Road, on either side of Port Road, approximately 1/2 mile east of the intersection of State Highway 146 and Port Road, Harris County, Texas. The Texas Commission on Environmental Quality's (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.

RANDY EARL WYLY has applied for a Major Amendment of TPDES Permit No. WQ0003190000, for a CAFO, to authorize the applicant to expand an existing Dairy facility from 950 head to a maximum capacity of 2,950 head, of which 1,800 head are milking cows. The facility is located on the east side of County Road 209, approximately 4 miles south of the intersection of US Highway 67 and County Road 209, which is approximately 7 miles southeast of the intersection of US Highway 67 and US Highway 281 in Erath County, Texas

SEA LION TECHNOLOGY INC which operates an organic chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003479000, which authorizes the discharge of previously monitored effluents (consisting of utility wastewater and storm water runoff) on an intermittent and flow variable basis via Outfall 001. The facility is located at 5700 Century Boulevard in the City of Texas City, Galveston County, Texas.

SOUTHWEST ENERGY AND FEED LLC which proposes to operate Southwest Energy & Feed Seminole Plant, has applied for a new permit, proposed Permit No. WQ0004848000, to authorize the disposal of wash water from a biodiesel refinery via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately nine (9) miles west of Seminole, Texas, in an extremely rural agricultural area. Located approximately three (3) miles south of State Highway 180, Gaines County, Texas. The facility and land application site are located in the drainage area of the Colorado River Below Lake J.B. Thomas, in Segment No. 1412 of the Colorado River Basin.

SUNOCO INC (R&M) which operates a facility that produces polyethylene and polypropylene, has applied for a renewal of TPDES Permit No. WQ0002600000, which authorizes the discharge of storm water on an intermittent and variable basis. The facility is located at 9802 Fairmont Parkway at the intersection of Underwood Road and Fairmont Parkway, Harris 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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805074
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 17, 2008

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Texas Facilities Commission

Request for Proposals #303-9-10160

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services, and Texas Health and Human Services Commission, announces the issuance of Request for Proposals (RFP) #303-9-10160. TFC seeks a five or ten year lease of approximately 26,353 square feet of office space in San Antonio, Texas.

The deadline for questions is October 21, 2008 and the deadline for proposals is October 30, 2008 at 3:00 p.m. The award date is December 17, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=78862.

TRD-200805057
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 16, 2008

◆ ◆ ◆
Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 20 to the Texas State Plan for the State Children's Health Insurance Program (SCHIP) under Title XXI of the Social Security Act. The proposed effective date of this amendment is October 1, 2008.

Every ten years, the United States Census Bureau conducts a national census. The next census will occur in 2010. The Census Bureau hires temporary employees to work on the census. Under the proposed amendment, income paid by the Census Bureau to temporary employees for work on the census will not be used to determine SCHIP eligibility. This income is currently excluded in determining eligibility for the Medicaid and Temporary Assistance to Needy Families programs as well.

Census work offers a unique opportunity for low-income individuals to earn money while receiving training and developing valuable skills. This state plan amendment takes advantage of the flexibility offered under SCHIP to ensure that individuals working on the census continue to have access to health care coverage for their children.

HHSC estimates that the proposed amendment will not have a fiscal impact.

For additional information or a copy of the amendment, please contact Stephanie Stephens in the Acute Care Policy Development unit of the Medicaid and CHIP Division by telephone at (512) 491-1482 or by e-mail at stephanie.stephens@hhsc.state.tx.us.

TRD-200805058
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 17, 2008

◆ ◆ ◆
Department of State Health Services

Notice of Public Hearing Concerning Rules for Licensing of Wholesale Distributors of Prescription Drugs--Including Good Manufacturing Practices

In accordance with Texas Government Code, §2001.039, the Department of State Health Services (department) will adopt the rules at 25 Texas Administrative Code Chapter 229, Subchapter B, Donation of Unused Drugs, §§229.21, and Subchapter W, Licensing of Wholesale Distributors of Prescription Drugs--Including Good Manufacturing Practices, §§229.421, 229.423 - 229.425 and 229.427 - 229.429.

The department will hold a public hearing on Thursday, October 2, 2008, starting at 1:00 p.m. at the Department of State Health Services, Moreton Building, Room M-653, 1100 West 49th Street, Austin, Texas.

This meeting is to allow stakeholders the opportunity to verbally provide any comments or concerns regarding the rules to the department. A draft of the proposed rules which were published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4112) can be obtained by contacting Karen Tannert at Karen.Tannert@dshs.state.tx.us.

Please contact Karen Tannert, Policy Standards and Quality Assurance Unit, Drugs and Medical Devices Group, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, or telephone (512) 834-6755 if you have questions.

TRD-200805036

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: September 15, 2008

Texas Department of Housing and Community Affairs

Request for Proposals for Administrative Law Judge

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for an Administrative Law Judge. The Administrative Law Judge will hold enforcement hearings to provide a neutral finding of facts and will present proposals for decision to the Board in connection with the enforcement of departmental program standards.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, on October 24, 2008. No proposal received after the deadline will be accepted.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposal in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Attorneys interested in submitting a proposal should contact Mr. Kevin Hamby, General Counsel, at (512) 473-3948, 221 East 11th Street, Austin, Texas 78701 or visit our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200805044

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 16, 2008

Texas Department of Insurance

Company Licensing

Application to change the name of FIDELITY LIFE INSURANCE COMPANY to HEALTHMARKETS INSURANCE COMPANY, a foreign life company. The home office is in Oklahoma City, Oklahoma.

Application to change the name of SEGUROS COMERCIAL AMERICA, S.A. DE C.V. to AXA SEGUROS, S.A. DE C.V., a foreign fire and casualty company. The home office is in Pittsburgh, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200805079

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 17, 2008

Notice of Public Hearing

Notice is hereby given that a public hearing will be held under Docket No. 2694 beginning at 10:00 a.m. on October 8, 2008. The hearing is scheduled to receive comments regarding proposed amendments to 28 TAC §§5.6401 - 5.6405, 5.6408, 5.6409, and 5.6411 - 5.6413 of Chapter 5, Subchapter G, Division 2, concerning Group Self-Insurance Coverage. The proposed amendments were published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5836).

The initial comment period for these rules, scheduled to end on August 25, 2008, is hereby extended to October 8, 2008.

The hearing will be held in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas 78701.

For information regarding the proposed amendments you may contact Kevin Brady at kevin.brady@tdi.state.tx.us.

TRD-200805037

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 15, 2008

Texas Lottery Commission

Instant Game Number 1058 "20 Times the Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1058 is "20 TIMES THE MONEY". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1058 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1058.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,

45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 1X, 2X, 5X, 10X, 20X, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,500, \$25,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1058 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV

48	FRET
49	FRNI
50	FFTY
51	FTON
52	FTTO
53	FTTH
54	FTFR
55	FTFV
56	FTSX
57	FTSV
58	FTET
59	FTNI
60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
78	SVET
79	SVNI
80	EGTY
1X SYMBOL	WINX1
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$2,500	25 HUND
\$25,000	25 THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,500, \$25,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1058), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1058-0000001-001.

K. Pack - A pack of "20 TIMES THE MONEY" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "20 TIMES THE MONEY" Instant Game No. 1058 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "20 TIMES THE MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 67 (sixty-seven) Play Symbols. If a player reveals YOUR LUCKY NUMBER play symbol within a GAME, the player wins PRIZE shown for that GAME. The player scratches the BONUS BOX for a chance to win up to 20 TIMES the total amount won on the ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 67 (sixty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 67 (sixty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 67 (sixty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 67 (sixty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize will appear on every ticket unless otherwise restricted.

C. No duplicate non-winning GAME 1 through GAME 10 play symbols on a ticket.

D. No more than two matching non-winning prize symbols.

E. The 1X BONUS BOX play symbol will appear on every winning ticket that is not designated by the prize structure to contain the 2X, 5X, 10X or 20X BONUS BOX play symbols.

F. Each GAME, other than GAME 1, may win more than once, but there will be no more than 10 wins per ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "20 TIMES THE MONEY" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "20 TIMES THE MONEY" Instant Game prize of \$1,000, \$2,500, \$25,000 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "20 TIMES THE MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "20 TIMES THE MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "20 TIMES THE MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 1058. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1058 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	180,000	16.67
\$20	420,000	7.14
\$50	60,000	50.00
\$100	42,500	70.59
\$200	7,500	400.00
\$500	1,400	2,142.86
\$1,000	150	20,000.00
\$2,500	50	60,000.00
\$25,000	31	96,774.19
\$100,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.22. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1058 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1058, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805033
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 15, 2008



Instant Game Number 1063 "LOTERIA® TEXAS"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1063 is "LOTERIA® TEXAS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1063 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1063.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL, and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1063 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number.

The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$33.00, \$50.00, \$80.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1063), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1063-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1063 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at

the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. No duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00, \$20.00, \$30.00, \$33.00, \$50.00, \$80.00, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$33.00, \$50.00, \$80.00, or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A

claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of \$3,000 or \$33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and, number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1063. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1063 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	1,451,520	6.94
\$4	322,560	31.25
\$7	282,240	35.71
\$10	181,440	55.56
\$17	161,280	62.50
\$20	161,280	62.50
\$30	15,288	659.34
\$33	10,500	960.00
\$50	8,568	1,176.47
\$80	8,400	1,200.00
\$300	4,200	2,400.00
\$3,000	92	109,565.22
\$33,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1063 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1063, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200805061
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 17, 2008



Instant Game Number 1125 "Weekly Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1125 is "WEEKLY BONUS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1125 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1125.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 and \$500/WK.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1125 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500/WK	20YEARS

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$500/WK.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1125), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1125-0000001-001.

K. Pack - A pack of "WEEKLY BONUS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY BONUS" Instant Game No. 1125 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WEEKLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY BONUS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY BONUS" Instant Game prize of \$500 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY BONUS" (Game 1125) payment

process. With this plan, a payment of \$500 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment each year of \$2,174 less Federal withholding will be made the month of the claim. The remaining 11 (eleven) months of each year, a payment of \$2166 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$6,500 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$26,000 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WEEKLY BONUS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WEEKLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1125. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1125 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	3,000,000	10.00
\$2	3,100,000	9.68
\$4	200,000	150.00
\$5	200,000	150.00
\$10	200,000	150.00
\$20	65,000	461.54
\$40	25,000	1,200.00
\$100	8,750	3,428.57
\$500WK/20 YEARS	5	6,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1125 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1125, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200804927
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 11, 2008



Instant Game Number 1130 "Extreme 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1130 is "EXTREME 8'S". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1130 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1130.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 8 SYMBOL, \$5.00, \$8.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$2,000 and \$50,000. The possible red play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40 and 8 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1130 - 1.2D

PLAY SYMBOL	CAPTION
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
7 (black)	SVN
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
17 (black)	SVT
19 (black)	NTN
20 (black)	TWY
21 (black)	TWON
22 (black)	TWTO
23 (black)	TWTH
24 (black)	TWFR
25 (black)	TWFV
26 (black)	TWSX
27 (black)	TWSV
29 (black)	TWNI
30 (black)	TRTY
31 (black)	TRON
32 (black)	TRTO
33 (black)	TRTH
34 (black)	TRFR
35 (black)	TRFV
36 (black)	TRSX
37 (black)	TRSV
39 (black)	TRNI
40 (black)	FRTY
8 SYMBOL (black)	WIN
1 (red)	ONE
2 (red)	TWO
3 (red)	THR
4 (red)	FOR
5 (red)	FIV
6 (red)	SIX
7 (red)	SVN
9 (red)	NIN
10 (red)	TEN

11 (red)	ELV
12 (red)	TLV
13 (red)	TRN
14 (red)	FTN
15 (red)	FFN
16 (red)	SXN
17 (red)	SVT
19 (red)	NTN
20 (red)	TWY
21 (red)	TWON
22 (red)	TWTO
23 (red)	TWTH
24 (red)	TWFR
25 (red)	TWV
26 (red)	TWSX
27 (red)	TWSV
29 (red)	TWNI
30 (red)	TRTY
31 (red)	TRON
32 (red)	TRTO
33 (red)	TRTH
34 (red)	TRFR
35 (red)	TRFV
36 (red)	TRSX
37 (red)	TRSV
39 (red)	TRNI
40 (red)	FRTY
8 SYMBOL (red)	TRIPLE
\$5.00 (black)	FIVE\$
\$8.00 (black)	EIGHT\$
\$10.00 (black)	TEN\$
\$20.00 (black)	TWENTY
\$50.00 (black)	FIFTY
\$100 (black)	ONE HUND
\$200 (black)	TWO HUND
\$2,000 (black)	TWO THOU
\$50,000 (black)	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$8.00, \$10.00, \$15.00, \$16.00, \$20.00 or \$24.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1130), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1130-0000001-001.

K. Pack - A pack of "EXTREME 8'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "EXTREME 8'S" Instant Game No. 1130 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "EXTREME 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) Play Symbols. If a player reveals a "BLACK 8" play symbol, the player wins prize shown instantly. If a player reveals a "RED 8" play symbol, the player wins TRIPLE the prize shown! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of

the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The "RED 8" (tripler) play symbol will only appear as dictated by the prize structure.

C. The "BLACK 8" (auto win) play symbol will only appear as dictated by the prize structure.

D. There will be a minimum of 4 and a maximum of 12 red play symbols on every ticket unless otherwise restricted by the prize structure.

E. No more than three matching non-winning prize symbols will appear on a ticket.

F. No duplicate non-winning play symbols on a ticket regardless of color.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 20 and \$20).

I. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "EXTREME 8'S" Instant Game prize of \$5.00, \$8.00, \$10.00, \$15.00, \$16.00, \$20.00, \$24.00, \$25.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "EXTREME 8'S" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "EXTREME 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "EXTREME 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "EXTREME 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1130. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1130 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	201,600	25.00
\$8	302,400	16.67
\$10	336,000	15.00
\$15	67,200	75.00
\$16	67,200	75.00
\$20	100,800	50.00
\$24	33,600	150.00
\$25	67,200	75.00
\$50	43,890	114.83
\$100	5,040	1,000.00
\$200	714	7,058.82
\$2,000	336	15,000.00
\$50,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.11. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1130 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1130, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805034
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 15, 2008



Instant Game Number 1131 "Bonus Blackjack"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1131 is "BONUS BLACKJACK". The play style is "beat score with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1131 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1131.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1131 - 1.2D

PLAY SYMBOL	CAPTION
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
STAR SYMBOL	WIN
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 20 (twenty) digit number consisting of the four (4) digit game number (1131), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1131-0000001-001.

K. Pack - A pack of "BONUS BLACKJACK" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BLACKJACK" Instant Game No. 1131 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BLACKJACK" Instant Game is determined once the latex on the ticket is scratched off to expose 33 (thirty-three) Play Symbols. If the total of any of YOUR HANDS beats the total of the DEALER'S HAND, the player wins the PRIZE shown

for that HAND. If any of YOUR HANDS total 21, the player wins DOUBLE the PRIZE shown for that HAND. If the DEALER BUSTS (total over 21), the player wins all 10 prizes instantly. If the player reveals a "star" symbol, the player wins \$100 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 33 (thirty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 33 (thirty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than two (2) matching non-winning prize symbols will appear on a ticket.

C. No duplicate YOUR HANDS in the same order on a ticket.

D. No hand will contain two aces.

E. There will be no ties between the DEALER'S HAND total and any YOUR HANDS total.

F. The "STAR" (\$100 auto win) play symbol will only appear as dictated by the prize structure.

G. The "STAR" (\$100 auto win) play symbol will always appear with the \$100 prize symbol.

H. The \$100 prize symbol may appear with other non-winning play symbols.

I. Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. The YOUR HANDS will total 21 (doubler) only as designated by the prize structure.

K. The DEALER'S HAND will never total 21.

L. The DEALER'S HAND will total more than 21 only as designated by the BUST levels on the prize structure.

M. The DEALER'S HAND will always total at least 12 but no more than 20 except as designated by parameter L.

N. The YOUR HANDS will never total less than 14.

O. The first two DEALER'S HAND play symbols on the left will always total less than 17.

P. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BLACKJACK" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot ver-

ify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BLACKJACK" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BLACKJACK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BONUS BLACKJACK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BONUS BLACKJACK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game No. 1131. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1131 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	648,000	13.89
\$4	864,000	10.42
\$5	108,000	83.33
\$10	126,000	71.43
\$20	54,000	166.67
\$50	37,500	240.00
\$100	15,000	600.00
\$500	940	9,574.47
\$2,000	21	428,571.43
\$20,000	9	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.86. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1131 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1131, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 11, 2008



Instant Game Number 1135 "Hearts on Fire"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1135 is "HEARTS ON FIRE". The play style is "other (find with auto win)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1135 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1135.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, ROSE SYMBOL, HEART SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1135 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
ROSE SYMBOL	WIN\$20
HEART SYMBOL	AUTO
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1135), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1135-0000001-001.

K. Pack - A pack of "HEARTS ON FIRE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HEARTS ON FIRE" Instant Game No. 1135 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HEARTS ON FIRE" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. If a player reveals a "HEART" play symbol in the PLAY AREA, the player wins the PRIZE shown for that symbol. If a player reveals a "ROSE" play symbol, the player wins \$20 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols will appear on a ticket.

C. No more than three matching non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 5 and \$5).

F. The "HEART" (auto win) play symbol will only appear as dictated by the prize structure and in conjunction with parameter 10.

G. The "ROSE" (win \$20) play symbol may only appear once on a ticket.

H. The "ROSE" (win \$20) play symbol will always appear with the \$20 prize symbol.

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "HEARTS ON FIRE" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the

claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HEARTS ON FIRE" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HEARTS ON FIRE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HEARTS ON FIRE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HEARTS ON FIRE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1135. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1135 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	623,040	11.36
\$4	679,680	10.42
\$5	283,200	25.00
\$10	155,760	45.45
\$20	42,480	166.67
\$50	13,039	542.99
\$100	5,900	1,200.00
\$1,000	34	208,235.29
\$20,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1135 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1135, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200804929
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 11, 2008



Instant Game Number 1136 "Hot Hand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1136 is "HOT HAND". The play style for this game is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1136 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1136.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$5,000, \$50,000, A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, APPLE SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSE SHOE SYMBOL, CLOVER SYMBOL, GOLD BAR SYMBOL, WISH BONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, and 7 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1136 - 1.2D

PLAY SYMBOL	CAPTION
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$50,000	50 THOU
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSE SHOE SYMBOL	SHO
CLOVER SYBOL	CLO
GOLD BAR SYMBOL	BAR
WISH BONE SYMBOL	WBN
CROWN SYMBOL	CRW
DIAMOND SYMBOL	DMD
CHERRY SYMBOL	CHY
7 SYMBOL	AUTO

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number.

The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1136), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1136-0000001-001.

K. Pack - A pack of "HOT HAND" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT HAND" Instant Game No. 1136 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOT HAND" Instant Game is determined once the latex on the ticket is scratched off to expose 61 (sixty-one) Play Symbols. In Game 1, if any of YOUR ROLLS total 7 or 11, the player wins the PRIZE shown for that ROLL. In Game 2, if a player reveals 2 matching cards within a HAND, the player wins the PRIZE shown for that HAND. If the player reveals 3 matching cards within a HAND, the player wins TRIPLE the PRIZE shown for that HAND. In Game 3, if a player reveals 2 matching card symbols, the player wins PRIZE shown. If the player reveals an "ACE" symbol, the player wins DOUBLE the PRIZE shown. In Game 4, if a player reveals 3 matching symbols within a PULL, the player wins the PRIZE shown for that PULL. If a player reveals a "7" symbol, the player wins the PRIZE shown instantly. In Game 5, if YOUR CARD'S rank is in between the rank of the DEALER'S LOW CARD and the DEALER'S HIGH CARD, the player wins the PRIZE shown for that hand. Aces are high. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 61 (sixty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 61 (sixty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
 16. Each of the 61 (sixty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 61 (sixty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. The top prize will appear on every ticket unless otherwise restricted.
- C. No three or more matching non-winning prize symbols on a ticket.
- D. GAME 1: No duplicate non-winning rolls in the same order on a ticket.
- E. GAME 1: No duplicate non-winning prize symbols in this game.
- F. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.
- G. GAME 2: No HAND will contain four or more matching play symbols.
- H. GAME 2: No duplicate non-winning prize symbols in this game.
- I. GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.
- J. GAME 2: No duplicate non-winning HANDS in this game in any order.
- K. GAME 2: A HAND will contain three matching play symbols only as dictated by the prize structure.
- L. GAME 2: No HAND will create a full house or straight.
- M. GAME 3: The "ACE" (doubler) play symbol will only appear as dictated by the prize structure.
- N. GAME 4: No duplicate non-winning PULLS in any order on a ticket.
- O. GAME 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.
- P. GAME 4: There will be many near wins on non-winning games which is two matching play symbols within a PULL.
- Q. GAME 4: The "7" (auto win) play symbol will only appear once in a PULL.
- R. GAME 4: No duplicate non-winning prize symbols in this game.
- S. GAME 5: No ties within a HAND.
- T. GAME 5: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.
- U. GAME 5: No duplicate non-winning prize symbols in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT HAND" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct

the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOT HAND" Instant Game prize of \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOT HAND" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HOT HAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HOT HAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by

the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1136. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1136 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	480,000	12.50
\$10	560,000	10.71
\$15	180,000	33.33
\$20	80,000	75.00
\$50	80,000	75.00
\$100	18,000	333.33
\$500	3,000	2,000.00
\$5,000	100	60,000.00
\$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1136 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1136, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200805063

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 17, 2008



Instant Game Number 1141 "7-11-21"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1141 is "7-11-21". The play style is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1141 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1141.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5,

6, 7, 8, 9, 10, 11, 12, 13, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1141 - 1.2D

PLAY SYMBOL	CAPTION
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1141), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1141-0000001-001.

K. Pack - A pack of "7-11-21" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "7-11-21" Instant Game No. 1141 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "7-11-21" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. The player adds up all 3 numbers for each GAME. If the total is 7, 11 or 21 within a GAME, the player wins the PRIZE shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning games (in any order) on a ticket.

D. Non-winning prize symbols will never be the same as a winning prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "7-11-21" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "7-11-21" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "7-11-21" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated

by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "7-11-21" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "7-11-21" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1141. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1141 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	668,800	13.64
\$2	851,200	10.71
\$4	228,000	40.00
\$5	60,800	150.00
\$10	60,800	150.00
\$20	22,800	400.00
\$40	16,720	545.45
\$100	760	12,000.00
\$1,000	76	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1141 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1141, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805064
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 17, 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 September 9, 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 Altres Energy LLC for Retail Electric Provider (REP) Certification, Docket Number 36129 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 October 3, 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 36129.

TRD-200804955
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: September 12, 2008



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 10, 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 Lahey & Partners, LLC for Retail Electric Provider (REP) Certification, Docket Number 36135 before the Public Utility Commission of Texas.

Applicant's requested service area includes the geographic area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 3, 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 36135.

TRD-200805039
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: September 15, 2008

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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 September 10, 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 Tenaska Power Services Co. for Retail Electric Provider (REP) Certification, Docket Number 36136 before the Public Utility Commission of Texas.

Applicant's requested service area includes the geographic area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 3, 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 36136.

TRD-200805040
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2008

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Notice of Application for Approval of New and Revised Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 10, 2008, for approval of new and revised depreciation rates pursuant to Public Utility Regulatory Act §52.252 and §53.056, Texas Utilities Code Annotated (Vernon 2007 & Supp. 2008). A summary of the application follows.

Docket Title and Number: Application of Border to Border Communications, Inc. for Approval of New and Revised Depreciation Rates Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 36138.

The Application: Border to Border Communications, Inc. (Border to Border) filed with the Public Utility Commission of Texas an application for approval of new depreciation rates for Account 2422 - Underground Cable-Metallic, Account 2422.1 - Underground Cable-Fiber, and Account 2441 - Conduit Systems. Further, Border to Border filed for approval of a revised depreciation rate for Account 2212 - COE-Digital Switching. Border to Border proposed an effective date of January 1, 2008.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 36138.

TRD-200804958
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2008

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 9, 2008, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of AMA TechTel Communications for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 36134.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. AMA TechTel seeks ETC/ETP designation in the service areas of the rural incumbent local exchange company (ILEC), Windstream Communications Southwest, and non-rural ILEC, AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by October 16, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas at 1-800-735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 36134.

TRD-200804956
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2008

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Notice of Application for Service Area Exception within Jack County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 10, 2008, for an amendment to certificated service area for a service area exception within Jack County, Texas.

Docket Title and Number: Application of Wise Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Jack County. Docket Number 36140.

The Application: Wise Electric Cooperative, Inc. (WEC) filed an application for a service area boundary exception to allow WEC to provide service to a specific customer located within the certificated service area of Oncor Electric Delivery Company (Oncor). Oncor 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 October 3, 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) at 1-800-735-2989. All comments should reference Docket Number 36140.

TRD-200804959

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 12, 2008



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 8, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand block of numbers in the San Antonio rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 36126.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 1, 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 36126.

TRD-200804954

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 12, 2008



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Kaufman County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 10, 2008, to amend a certificate of convenience and necessity for a proposed transmission line in Kaufman County, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Kaufman County. Docket Number 35996.

The Application: The application of Oncor Electric Delivery Company, LLC (Oncor) for two new 138 kV double-circuit transmission lines is designated as the Ables Springs 138 kV Transmission Line Project. The North Texas Municipal Water District (NTMWD) is constructing a new water treatment plant in Kaufman County, northeast of the City of Terrell, and a water pipeline from Lake Tawakoni to Lake Lavon. The NTMWD requests service from two 138 kV lines to provide the required level of reliability for a water treatment plant. In ad-

dition, the proposed transmission lines also provide improved service to the existing and proposed substations in the area. The estimated date to energize facilities is May 2010.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 25, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 35996.

TRD-200804953

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 12, 2008



Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On September 9, 2008, CURRENT Communications of Texas, L.P. 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 60754. Applicant intends to relinquish its certificate.

The Application: Application of CURRENT Communications of Texas, L.P. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 36133.

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 October 1, 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 36133.

TRD-200804960

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 12, 2008



Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

In the September 12, 2008, issue of the *Texas Register* (33 TexReg 7794), the Texas Department of Transportation, Aviation Division, published a request for proposal for aviation engineering services for the City of San Marcos, San Marcos Municipal Airport, TxDOT CSJ No. 0914SMRCO. That project has now been cancelled. For questions, please contact the Aviation Division at 1-800-68-PILOT (74568).

TRD-200805052

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: September 16, 2008



Public Notice - Creation of Specialty License Plates

Under Title 43, Texas Administrative Code, §17.28(i)(1)(D), the Texas Department of Transportation is required to publish notice of all tentatively approved specialty license plates for public comment. The department will accept comments on these specialty license plates until 5:00 p.m. on Monday, October 6, 2008.

The specialty license plate tentatively approved and open for comment is: Marine Engineers Beneficial Association (MEBA). This plate will be available to the general public and will not have qualifying restrictions. The license plate image may be viewed at:

www.txdot.gov,

keyword: plate vote. All comments will be considered prior to the final decision.

Please e-mail comments to

tbelk@dot.state.tx.us

or write to Tammy Belk, Texas Department of Transportation, Vehicle Titles and Registration Division, 4000 Jackson Avenue, Austin, Texas 78779-0001. For more information go to

www.txdot.gov.

TRD-200805053

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: September 16, 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 33 (2008) is cited as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 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 (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with 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).