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# TEXAS REGISTER

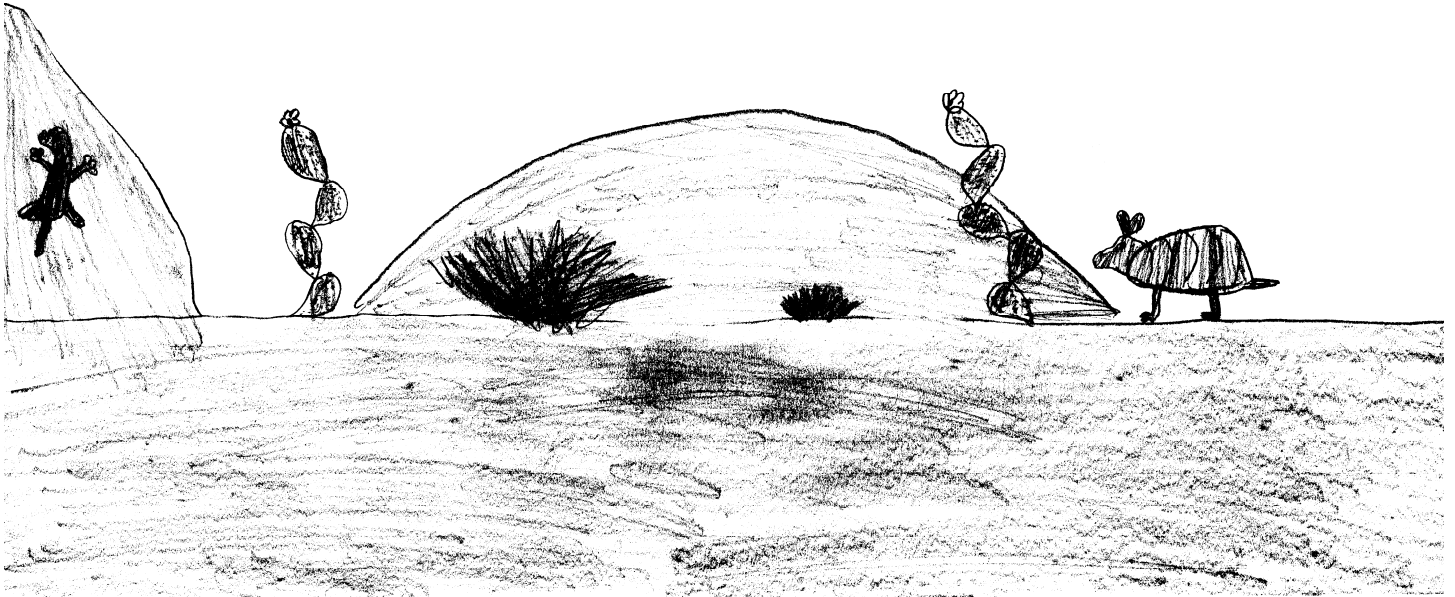
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*Kylee Robinson  
3rd Grade*



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

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# Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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

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

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

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

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

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

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

# 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 November 21, 2008

Appointed to the Texas Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2013, Clyde Louis West of Taylor (pursuant to Health and Safety Code Chapter 93, Section 93.0002).

Appointed to the Texas Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2013, Margie Sue Pope of Willis (replacing Sheila Tello of Corpus Christ whose term expired).

### Appointments for November 24, 2008

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2009, David Lance McWhorter of Coleman (replacing Jack B. Horne of Coleman whose term expired).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2011, Patrick Shane Justiss of Coleman (replacing John S. Hensley of Coleman whose term expired).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2011, Kimberly Ethetton Horne of Valera (replacing Alice B. Hemphill of Coleman whose term expired).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2013, Roger Nelson of Santa Anna (replacing Ronald Owens of Coleman whose term expired).

### Appointments for November 25, 2008

Appointed to the Texas A&M University System Board of Regents, effective December 8, 2008, for a term to expire February 1, 2013, Richard Box of Austin (replacing J.L. Huffines of Dallas who resigned).

Appointed to the Coastal Water Authority Board of Directors for a term to expire April 1, 2009, Zebulun Nash of Houston (replacing Darryl King of Houston whose term expired).

### Appointments for December 1, 2008

Appointed to the Texas Low Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1206, 73rd Legislature, Regular Session, for a term to expire November 25, 2014, Richard H. Dolgener of Andrews.

Appointed to the Texas Low Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1206, 73rd Legislature, Regular Session, for a term to expire November 25, 2014, Bob Gregory of Austin.

Appointed to the Texas Low Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1206, 73rd Legislature, Regular Session, for a term to expire November 25, 2014, John C. White of Plano.

Appointed to the Texas Low Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1206, 73rd Legislature, Regular Session, for a term to expire November 25, 2014, Michael S. Ford of Amarillo.

Appointed to the Texas Low Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1206, 73rd Legislature, Regular Session, for a term to expire November 25, 2014, Kenneth Peddicord of College Station.

Appointed to the Texas Low Level Radioactive Waste Disposal Compact Commission, pursuant to SB 1206, 73rd Legislature, Regular Session, for a term to expire November 25, 2014, Robert C. Wilson of Lockhart.

Mr. Ford will serve as chair of the commission and Mr. White will service as vice chair.

Rick Perry, Governor

TRD-200806318



# 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>.)

## Opinions

### Opinion No. GA-0684

David L. Lakey, M.D.

Commissioner

Texas Department of State Health Services

1100 West 49th Street

Austin, Texas 78756

Re: Whether the federal Airline Deregulation Act preempts the state statute and regulation authorizing an EMS subscription program as applied to air ambulances (RQ-0719-GA)

### SUMMARY

Pursuant to section 157.11(l) of Title 25, Texas Administrative Code, emergency medical service providers may establish a subscription program allowing members a reduced rate for air ambulance services. Because section 157.11(l) relates to charges for air ambulance services, the federal Airline Deregulation Act of 1978 (ADA) preempts it as to air carriers providing interstate air ambulance services. The ADA preempts the state regulation as applied to a ground ambulance service.

### Opinion No. GA-0685

The Honorable Jerry Madden

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an out-of-state company may be considered a "resident bidder" under particular circumstances (RQ-0703-GA)

### SUMMARY

The term "Texas bidder" as defined by Government Code section 2155.444(c)(2) means a business that is incorporated in Texas, a business that has its principal place of business in Texas, or a business

that has an established physical presence in Texas. See TEX. GOV'T CODE ANN. §2155.444(c)(2) (Vernon 2008). Whether a business has its principal place of business in Texas under section 2155.444(c)(2) is a fact-sensitive inquiry.

A range of remedies and responses may be available under the State Purchasing and General Services Act ("Purchasing Act") if a bidder inaccurately represents it is a Texas bidder in its proposal. Agency protest procedures can be initiated by other bidders and vendors can be barred from participating in state contracts or be removed from certain bidders lists as the result of such inaccuracies. Additionally, a contract entered into pursuant to such a proposal may be rendered voidable and, in some instances, criminal prosecution may be pursued. The availability of any remedy or response in any particular bidding context depends upon the facts.

The purchasing preferences in Government Code section 2155.444(e) apply when (1) the service otherwise meets the state's requirements and expected quality, and (2) "the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference under th[e] subsection." *Id.* §2155.444(e) (emphasis added). Under the express provisions of section 2155.444(e)(2), if there is an actual tie in the proposed cost of the service, a preference applies if the service is "of similar expected quality."

Any statutes applicable to a particular state agency as well as any rules adopted by the agency must be reviewed to determine what recourse might be available when a bidder believes bidding preferences were applied incorrectly.

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

TRD-200806311

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 2, 2008

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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 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 11. ADMINISTRATIVE DEPARTMENT

##### 13 TAC §11.7

The Texas Historical Commission proposes an amendment to §11.7 of Title 13, Part 2, Chapter 11 of the Texas Administrative Code, concerning the Code of Conduct and Agency Ethics Policy. This amendment is needed to comply with §572.051(d) of the Texas Government Code, Standards of Conduct; State Agency Ethics, which requires all state agencies to adopt an ethics policy and requires the Office of the Attorney General to provide a model policy.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Oaks has also determined that for each year of the first five year period the rule is in effect, the public benefit anticipated will be the improved clarity in the agency ethics policy and clear standards for all employees to observe. Additionally, there will be no effect on small businesses, micro-businesses or individuals and no taking of private property for public use.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under Chapter 442 of the Texas Government Code, which provides the Texas Historical Commission with authority to promulgate rules and §572.051(d) of the Texas Government Code.

##### §11.7. Code of Conduct and Ethics Policy.

(a) If a member, agent, or employee of the Texas Historical Commission has a conflict of interest in any transaction involving the selection, award, or administration of historic preservation funds, state historic preservation grants, or museum grants, he or she may not participate in a vote, discussion, or decision about the matter.

(b) A person has a conflict of interest in such a transaction if a financial benefit as a result of such a transaction is likely to be received by any of the following:

- (1) the person; [ø¶]
- (2) any member of the person's immediately family, which includes spouse and any minor children; [ø¶]

(3) a business partner of the person; or

(4) any organization for profit in which the person or any persons of paragraphs (2) and (3), of this subsection is serving or is about to serve as an officer, director, trustee, partner, or employee.

(c) A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other thing of monetary value.

##### (d) Ethics Policy.

(1) Pursuant to §572.051(c) of the Texas Government Code, the commission promulgates the following ethics policy.

(2) This ethics policy prescribes standards of conduct for all commission employees.

(3) This ethics policy does not supersede any applicable federal or Texas law or administrative rule.

(4) All commission employees must familiarize themselves with this ethics policy.

(5) All commission employees must abide by all applicable federal and Texas laws, administrative rules, and commission conduct policies, including this ethics policy. A commission employee who violates any provision of the commission's ethics policies is subject to termination of the employee's state employment or another employment-related sanction. A commission employee who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties in addition to any employment-related sanction.

##### (e) Standards of Conduct.

##### (1) A commission employee shall not:

(A) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;

(B) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(C) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Texas Government Code Annotated Chapter 552), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position;

(D) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;

(E) make personal investments, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;

(F) utilize state time, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state or commission, interfere with the employee's official duties, and interfere with commission functions;

(G) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(H) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(I) engage in any political activity while on state time or utilize state resources for any political activity.

(2) A commission employee shall:

(A) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the commission; and

(B) report any conduct or activity that the employee believes to be in violation of this ethics policy to his or her division director, or, if the division director is involved in the conduct or activity, to the executive director.

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

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

TRD-200806217

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Proposed date of adoption: January 30, 2009

For further information, please call: (512) 463-8817



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND**

##### **19 TAC §33.65**

The State Board of Education (SBOE) proposes an amendment to §33.65, concerning the guarantee program for school district bonds. The section establishes provisions for the administration of the bond guarantee program. The proposed amendment would clarify the policies for administration of the school district

bond guarantee program and the procedures a school district must follow when applying for a bond guarantee through this program.

The Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the guarantee bond program as authorized in the TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. The TEC, §45.063, authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program. Section 33.65 is the rule the SBOE adopted to implement the program.

Section 33.65 sets out the statutory provisions for the bond guarantee program, provides definitions, and explains the requirements of and policies related to the program's application process. The rule also provides limitations on access to the guarantee program and allows for the commissioner to allocate specific holdings of the Permanent School Fund (PSF) under certain conditions. The rule explains what effect defeasement has on guaranteed bonds and sets out specific program conditions for bonds issued or guaranteed on certain specified dates. The rule also explains program payment conditions and guarantee restrictions.

The proposed amendment would modify the rule in the following ways.

In subsection (b), which defines terms used in the rule, the definition of annual debt service would be clarified.

In subsection (c), on data sources, the description of how enrollment increases are determined would be clarified. Also, the reasons for which the commissioner may consider adjustments to data values would be expanded to include adjusting values that are not reflective of current conditions.

Subsection (d), on application processing, would be changed to reference an initial approval process and a final approval process instead of simply "the approval process." In paragraph (3)(A), the requirements related to district accreditation and eligibility of re-funding bonds for guarantee would be clarified. In paragraph (4), the description of the process that the commissioner will follow each month to estimate the available capacity of the PSF would be clarified. Paragraph (5)(A) would be modified to allow the commissioner to increase the amount of the PSF in reserve as necessary. In paragraph (7), requirements and policies related to a new initial bond guarantee program approval process would be added.

Subsection (e), on application for the guarantee, would be modified to add requirements relating to the bond guarantee program application fee to paragraph (1) and requirements relating to a new initial approval process to paragraph (2). A new paragraph (3) would be added to subsection (e), setting out the requirements of a new final approval process.

In subsection (f), the amount of debt service per student to which a district seeking bond guarantee approval is limited would be raised.

Minor technical corrections and corrections in word usage would be made throughout the rule.

Procedural and reporting implications include the following.

A district that received initial bond guarantee program approval would be required to provide a written notice by facsimile or email to the Texas Education Agency (TEA) two business days before issuing a preliminary official statement (POS) for the bonds that would be eligible for the guarantee or two business days be-

fore soliciting investment offers, if the bonds would be privately placed without the use of a POS.

A district that then received confirmation from the TEA that the PSF capacity continued to be available would be required to provide written notice to the TEA of the placement of an agenda item on a meeting of the school board of trustees to approve the bond sale no later than two business days before the meeting. If the bond sale were to be completed pursuant to a delegation by the board to a pricing officer or committee, notice would be required to be given no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee. Any locally maintained paperwork requirements would be consistent with the reporting requirements described for the procedural and reporting implications.

Shirley Beaulieu, associate commissioner for finance/financial officer, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for local government (school districts); however, potential costs to school districts are impossible to estimate at this time. Districts that issue bonds without the benefit of the PSF Bond Guarantee program are likely to purchase private bond insurance at a cost that is higher than the fee for the PSF Bond Guarantee program. Actual costs will be influenced by the unique circumstances of each school district that proposes to issue bonds, including the market's assessment of the district's financial condition and the proposed bond issue. There are no additional costs anticipated for the state.

Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the clarification of the policies and procedures a district must follow to apply for a bond guarantee. The PSF Bond Guarantee program provides low-cost bond insurance to school districts in Texas and ensures that the bonds issued by school districts under this program will be rated AAA in the bond market. This superior bond rating allows districts to market their bonds at the lowest possible interest rates and thus reduces the long-term costs of the bonds for school districts and taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under TEC, Chapter 45, Subchapter C, and §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program.

The amendment implements the Texas Education Code, §7.102(c)(33) and §45.063.

§33.65. *Guarantee Program for School District Bonds.*

(a) Statutory provision. The commissioner of education must ~~[shall]~~ administer the guarantee program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the state information depository (SID), [set forth in the final official statement or the final bond order for the bonds most recently issued by the district,] if the district has outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the SID as of the date of the application deadline.

(B) ~~[(A)]~~ The annual debt service does not include the amount of debt service to be paid on the bonds for which the reservation is sought.

(C) ~~[(B)]~~ The debt service amounts used in this calculation for variable rate bonds will be those [that] which are [is] published in the final official statement.

(2) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.

(3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be received by the Texas Education Agency division responsible for state funding by 5:00 p.m. on the last business day of the month ~~[in order]~~ to be considered in that month's application processing.

(4) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type maintenance of tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(5) Refunding issue--An issuance of bonds for the purpose of refunding bonds that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds that were authorized by a bond election under the TEC, §45.003.

(6) Combination issue--An issuance of bonds for which an application is filed for a guarantee that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the guar-

antee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(7) Average daily attendance (ADA)--Total refined average daily attendance as defined by §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook).

(8) Enrollment growth--Growth in student enrollment that has occurred over the previous five years.

(c) Data sources.

(1) The following data sources will ~~[shall]~~ be used for purposes of prioritization:

(A) projected ADA as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller will ~~[shall]~~ be used;

(C) annual debt service, as defined in subsection (b)(1) of this section, due during the fiscal year in which the proposed debt will be issued. The amount of debt service on the proposed bond issue will not be included in the calculation of annual debt service; and

(D) enrollment increases over the previous five years, which will ~~[shall]~~ be determined using enrollment reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date. ~~[submission data available at the time of application.]~~

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before ~~[prior to]~~ the deadline for receipt of applications for that application cycle.

(d) Application processing. To facilitate prioritization of applications for the guarantee, all applications received during a calendar month will be held until the twentieth ~~[tenth]~~ business day of the subsequent month. On the twentieth ~~[tenth]~~ business day of each month, the commissioner of education will announce the results of the prioritization described in paragraph (5) of this subsection and process applications for initial approval of the guarantee up to the available capacity as of the application deadline, subject to the requirements of this subsection.

(1) The school district may not submit an application for a guarantee before ~~[prior to]~~ the successful passage of an authorizing proposition.

(2) The actual guarantee of the bonds is subject to the initial approval process and the final approval process prescribed in subsection (e) of this section.

(3) Refunding issues must comply with the following requirements ~~[in order]~~ to retain eligibility for the guarantee for the refunding bonds.

(A) The district must have an accreditation status of Accredited as defined by §97.1055 of this title (relating to Accreditation Status). If the district has an accreditation status of Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the refunding bonds will not be eligible to retain the guarantee. Districts with an accreditation status of Not Accredited-Revoked will not be eligible to retain the guarantee on the refunding bonds. ~~[be accredited.]~~

(B) The bonds to be refunded must have been previously guaranteed by the Permanent School Fund (PSF). Only refunding issues as defined in subsection (b)(5) of this section are eligible for the guarantee.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and must not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must ~~[shall]~~ be computed at the true interest cost of the refunding bonds.

(D) ~~[In the event that]~~ a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrates compliance for both the new money portion of the issue and the refunding portion of the issue.

(E) The refunding transaction must comply with the provisions of paragraph (7)(A) and (C) of this subsection.

(4) The commissioner ~~[of education]~~ will estimate the available capacity of the PSF ~~[Texas Permanent School Fund (PSF)]~~ on a monthly basis to provide initial approval to the guarantee of school district bonds. The commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (e)(3) of this section.

(5) The State Board of Education (SBOE) will ~~[shall]~~ establish an amount of capacity to be held in reserve of no less than 5.0% of the fund's capacity. Guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds, as determined by subtracting the amount to be held in reserve from the total available capacity. The reserved capacity can be used to award guarantees for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in the TEC, §44.031(h).

(A) The amount to be held in reserve may be increased by a majority vote of the SBOE based on changes in the asset allocation and risk in the portfolio and unrealized gains in the portfolio, or by the commissioner as necessary to prudently manage fund capacity.

(B) Guarantees will be awarded to applicants based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process.

(6) An application received after the application deadline will ~~[shall]~~ be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(7) Each district that submits a valid application will ~~[shall]~~ be notified of the application status within ten business days of the end of the month following the application deadline. If a district is awarded initial approval for the guarantee as described in subsection (e)(2) of this section, the following must be met.

(A) The district must comply with the provisions for final approval described in subsection (e)(3) of this section to maintain approval for the guarantee.

(B) ~~[(A)]~~ The ~~[If a district is awarded a guarantee, the]~~ bonds must be approved by the Office of the Attorney General within 120 days of the date of the letter granting the approval of the guarantee. The initial approval for the guarantee will expire at the end of the 120-day period. The commissioner may extend the 120-day period, based on extraordinary circumstances, upon receiving a written request from the district prior to the expiration of the 120-day period.

(8) ~~[(B)]~~ If a district does not receive a guarantee or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may reapply ~~[re-apply]~~ in a subsequent month. Applications that were denied a guarantee will not be retained for consideration in subsequent months.

(9) ~~[(C)]~~ If the bonds are not approved by the Office of the Attorney General within 120 days of the date of the letter granting the approval of the guarantee, the commissioner will ~~[shall]~~ consider the application withdrawn and the district must reapply ~~[re-apply]~~ for a guarantee.

(10) ~~[(D)]~~ Districts may not represent the bonds as guaranteed for the purposes of pricing or marketing the bonds prior to the date of the letter granting approval of the guarantee.

(e) Application for the guarantee.

(1) Application process. Districts must ~~[shall]~~ apply to the commissioner of education for the guarantee of eligible bonds. The district must ~~[shall]~~ submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application must ~~[shall]~~ be accompanied by a fee to be set by the commissioner and approved by the SBOE.

(A) The fee is due at the time the application for the guarantee is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.

(B) The fee will not be refunded to a district that:

(i) is not approved for the guarantee; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee.

(C) The fee may be transferred to a subsequent application for the guarantee by the district if the district withdraws its application and submits the subsequent application before the expiration of its initial approval for the guarantee.

(2) Initial approval. Under the TEC, §45.056, the commissioner will ~~[shall]~~ investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will ~~[shall]~~ include the following:

(A) the purpose of the bond issue;

(B) the district's accreditation status as defined by §97.1055 of this title in accordance with the following: ~~[and compliance with statutes and rules of the Texas Education Agency; and]~~

(i) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

(ii) if the district's accreditation status is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or

(iii) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;

(C) the district's compliance with statutes and rules of the Texas Education Agency (TEA); and

(D) ~~[(E)]~~ the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §45.0031 and §45.005.

(3) Final approval. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.

(A) A district that has received initial approval must provide a written notice to the TEA two working days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an agenda item on a meeting of the school board of trustees to approve the bond sale no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.

(C) The TEA will process requests for final approval from districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A district may provide written notification as required by this paragraph by facsimile transmission or by electronic mail in a manner prescribed by the commissioner.

(f) Limitations on access to the guarantee.

(1) The following limitations apply to bonds for which the election authorizing the issuance of bonds was called after July 15, 2004.

(2) The commissioner will ~~shall~~ limit approval of the guarantee to a district with less than \$1,650 [~~\$1,250~~] of annual debt service per student in ADA at the time of the application for a guarantee. The limitation will ~~shall~~ not apply to school districts that have enrollment that is at least 25% higher than the enrollment reported five years earlier, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section.

(3) The eligibility of bonds to receive the guarantee is limited to those new money, refunding, and combination issues as defined in subsection (b)(4)-(6) of this section.

(g) Allocation of specific holdings. If necessary to successfully operate the guarantee program, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will ~~shall~~ not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ~~shall~~ ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will ~~shall~~ not affect any rights of the bond holders under law.

(h) Defeasement. The guarantee will ~~shall~~ be completely removed when bonds guaranteed by this program are defeased, and such a provision must ~~shall~~ be specifically stated in the bond resolution. If bonds guaranteed by this program are defeased, the district must ~~shall~~ notify the commissioner in writing within ten calendar days of the action.

(i) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must ~~shall~~ certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(j) Bonds guaranteed before December 31, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will ~~shall~~ cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will ~~shall~~ direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(k) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will ~~shall~~ cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will ~~shall~~ direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(l) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand

payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.

(m) Guarantee restrictions. The guarantee provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

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 December 1, 2008.

TRD-200806226

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 11, 2009

For further information, please call: (512) 475-1497



## CHAPTER 101. ASSESSMENT SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

### 19 TAC §101.23

The State Board of Education (SBOE) proposes an amendment to §101.23, concerning performance standards. The section sets the standard of satisfactory performance on the Texas Assessment of Knowledge and Skills (TAKS). The proposed amendment would set new performance standards as appropriate for the reading and mathematics assessments in Grades 3-8 based on the implementation of a vertical scale.

Senate Bill (SB) 1031, enacted by the Texas Legislature in 2007, requires the implementation of a vertical scale to compare the performance of individual students from one grade level to the next in Grades 3-8 on the reading and mathematics TAKS beginning with the 2008-2009 school year. The vertical alignment of these assessments at different grade levels requires the SBOE to adjust the TAKS standards at the specified grades. In October 2008, the Texas Education Agency (TEA) convened panels of experts to evaluate data for the reading and mathematics assessments in Grades 3-8 and develop recommendations on the performance standards for those assessments.

SB 1031, 80th Texas Legislature, 2007, requires the implementation of a vertical scale to compare the performance of individual students from one grade level to the next beginning with the 2008-2009 school year in the following grades and subjects: TAKS English Grades 3-8 reading; TAKS English Grades 3-8 mathematics; TAKS Spanish Grades 3-6 reading; and TAKS Spanish Grades 3-6 mathematics.

This change to the Texas assessment program requires a performance standards review to determine whether observed differences in performance across grades are appropriate or whether the standards should be adjusted. In the review process, panelists examined the cut scores implemented

under the initial standard-setting process in light of updated impact data and other information relevant to the changes in the assessment program. Following their review, the review committees recommended whether a change to the cut scores associated with the performance standards was needed. The TAKS standards included in rule as figures result from a standards review process conducted from July through October 2008.

When the TAKS program was first developed, TEA convened a national Technical Advisory Committee (TAC) to advise the SBOE on standard-setting activities. This committee was composed of prominent educational testing experts with experience in standard setting in other major testing programs across the country. The current TAC met in July 2008 to review the standards for the TAKS reading and mathematics assessments in Grades 3-8 and to provide guidance on the proposed standards review process.

In October 2008, TEA conducted four standards review meetings for the English TAKS assessments and two standards review meetings for the Spanish TAKS assessments. The panelists who participated in these review meetings were selected based on recommendations from school districts, stakeholder groups, business leaders, and members of the SBOE.

The 2008 standards review built on the item-mapping method used for the initial TAKS standard setting in 2002. The general process followed by the review panelists is summarized below.

*Overview of the standards review process.* Meeting facilitators discussed the purpose of setting standards and why this specific review was required for the development of a vertical scale.

*Review of current TAKS performance standards on the vertical scale.* Panelists examined charts showing the performance standards at each grade level relative to each other on the common vertical scale. Based on this information, panelists discussed differences in performance standards across grades.

*Taking the assessment.* In a step repeated separately for each grade, the panelists took the TAKS assessments to experience the tests in the same way that students would. After completing each test, panelists scored their responses and discussed the test in terms of content, difficulty, the construct being measured, and the testing experience itself.

*Review of 2003 through 2008 impact data.* In a step repeated separately for each grade, the panelists studied information about the percent of students (overall and by individual student) classified into each performance level at the panel-recommended standards across the first six TAKS administrations, paying attention to changes in student performance over time.

*Round 1.* In a step repeated separately for each grade--based on the review and discussion performed above and taking into consideration information about the standard error of measurement--panelists made recommendations about changes to the cut scores on each assessment using the 2008 performance standards as a baseline.

*Round 2.* In a step repeated separately for each grade, the panelists reviewed their recommendations from Round 1. As part of this process, they received impact data using the revised performance standards as well as feedback on how each panelist's recommendations compared to his or her peers. Following a discussion, each panelist made recommendations in the same manner as in Round 1.

*Smoothing.* For the English panels only, a "smoothing committee" composed of select panelists evaluated whether the recommended changes to the performance standards were reasonable given the standards set in the other elementary or middle school grade cluster for the same subject area. Based on their evaluation, this committee recommended adjustments to certain results in certain grades.

The panel recommended changing the TAKS standards in the following grades and subjects: *Met the Standard--Reading* (English), Grades 6 and 8; *Met the Standard--Reading* (Spanish), Grade 6; *Met the Standard--Mathematics* (Spanish), Grades 3, 4 and 6; *Commended Performance--Reading* (English), Grades 6 and 8; *Commended Performance--Reading* (Spanish), Grade 6; *Commended Performance--Mathematics* (English), Grades 5, 6 and 8; and *Commended Performance--Mathematics* (Spanish), Grades 4 and 6.

The proposed amendment to 19 TAC §101.23 would consolidate the information formerly contained in subsection (b) into an expanded subsection (a). Subsection (a) would also include a new figure (Figure: 19 TAC §101.23(a)) identifying the performance standards established by the SBOE for all the TAKS assessments other than the TAKS reading and mathematics assessments in Grades 3-8. The amended subsection (b) would contain a new figure (Figure: 19 TAC §101.23(b)) identifying only the performance standards for the TAKS reading and mathematics assessments in Grades 3-8. Subsection (c) would be deleted because it refers to the State Developed Alternative Assessment (SDAA II), which is no longer administered.

The effective date for the proposed rule action is September 1, 2009, which would make the revised standards binding in the 2009-2010 school year. Nevertheless, TEA will report scores based on the vertical scale for the assessments administered in spring 2009 as information only for parents and educators. In order to proceed with this plan, the SBOE must approve for second reading and final adoption the proposed performance standards prior to the reporting of assessment results in March 2009.

The transition to a vertical scale in the spring of 2009 will impact all student assessment TAKS reporting for Grades 3-8. Beginning in the 2009-2010 school year, TAKS scores for Grades 3-8 reading and mathematics will no longer be reported on the current horizontal scale, which was implemented in 2002-2003.

Criss Cloudt, associate commissioner for assessment, accountability, and data quality, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for the state. A contract amendment between the TEA and Pearson, the state's assessment contractor, lists scheduled payments totaling \$1,833,052 in fiscal year 2009 for the development of a vertical scale for TAKS mathematics and reading in Grades 3-8. In addition, Pearson submitted a charge of \$1,105,588 for the same purpose in fiscal year 2008, bringing the state's total cost for vertical scaling within the assessment contract to \$2,938,640. There are no fiscal implications anticipated for local government.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be implementation of the vertical scale required under the TEC, §39.036, which will benefit students, educators, and the public by providing a fair and reliable measure of the academic growth and achievement of public school students over time. Standards review provides a

process to demonstrate that the differences in standards across grades are meaningful from content, instructional, and developmental perspectives once the vertical scale is in place. A standards review is also in keeping with the recommendation of the initial TAKS standard-setting panels that performance standards should be reviewed two to three years after they are fully implemented. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §39.024, which authorizes the SBOE to determine the level of performance considered to be satisfactory on the assessment instruments. The TEC, §39.036, requires the TEA to develop and implement the vertical scale in the administration of certain assessment instruments.

The amendment implements the Texas Education Code, §39.024 and §39.036.

#### §101.23. Performance Standards.

(a) Except as otherwise provided by the Texas Education Code (TEC), Chapter 39, Subchapter B, the State Board of Education (SBOE) shall determine the level of performance considered to be satisfactory on the assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the Texas Assessment of Knowledge and Skills (TAKS) for all grades and subjects other than reading and mathematics in Grades 3-8. ~~Except as otherwise provided by this subsection, the~~ "commended" and "met" standards are based on spring 2003 operational test forms. Future forms will be equated by the Texas Education Agency to the 2003 assessments in order to ensure that equivalent standards are maintained. The "commended" and "met" standards established by the SBOE for the TAKS Grade 8 science assessment are based on the spring 2006 operational test form. Future forms of the Grade 8 science assessment will be equated by the Texas Education Agency to the 2006 assessment in order to ensure that equivalent standards are maintained. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career. ~~[For example, a student in Grade 12 during the 2004-2005 school year will be allowed to graduate under the TAKS exit-level standard that was in place at the time the student entered Grade 10 in the 2002-2003 school year.]~~

Figure: 19 TAC §101.23(a)  
[Figure: 19 TAC §101.23(a)]

(b) As established in subsection (a) of this section, the SBOE shall determine the level of performance considered satisfactory on assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the TAKS reading and mathematics assessments in Grades 3-8. ~~[Grade 8 science assessment.]~~ The "commended" and "met" standards are based on the spring

2008 operational test forms following the implementation of the vertical scale required under the TEC, §39.036. ~~[2006 operational test form.]~~ Future forms of the test will be equated by the Texas Education Agency to the 2008 ~~[2006]~~ assessment in order to ensure that equivalent standards are maintained.

Figure: 19 TAC §101.23(b)  
[Figure: 19 TAC §101.23(b)]

[(e) The alternative assessment of academic skills will measure annual growth based on appropriate expectations for each student receiving special education services, as determined by the student's admission, review, and dismissal (ARD) committee in accordance with criteria established by the commissioner of education as required by the TEC, §39.024(a).]

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

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



## CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

The State Board of Education (SBOE) proposes amendments to §§111.23, 111.24, 111.33, 111.34, and 111.36, concerning the Texas essential knowledge and skills (TEKS) for mathematics. The sections establish the TEKS for mathematics courses in middle school and high school. The proposed amendments would incorporate approved college readiness standards into the mathematics TEKS.

House Bill 1, passed by the 79th Texas Legislature, Third Called Session, 2006, requires the development of college readiness standards and the incorporation of approved college readiness standards and expectations into the essential knowledge and skills. College readiness standards in English language arts, mathematics, science, and social studies were adopted by the Texas Higher Education Coordinating Board on January 24, 2008. During the May 2008 meeting, the SBOE directed Texas Education Agency (TEA) staff to convene a committee to make recommendations for incorporating approved college readiness standards into the mathematics TEKS. The committee met on August 28-29, 2008, to work on recommendations for amendments to the TEKS for middle school and high school mathematics. Committee recommendations were presented during the discussion at the special September 29, 2008, SBOE meeting, and no further changes were recommended subsequent to that meeting.

Anita Givens, acting associate commissioner for standards and programs, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed amendments.



There will be normal business costs associated with this process for the Texas Education Agency (TEA), including staff travel, meeting accommodations, and production and dissemination of documents. In addition, a need for the development and implementation of professional development to help teachers and administrators understand the amended mathematics TEKS is anticipated. It is not possible to determine the exact fiscal implication until input is received from districts regarding potential needs. It is also possible that additional instructional materials or supplements to instructional materials might be needed.

There are anticipated fiscal implications for school districts to implement the amended TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Ms. Givens 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 rule actions would include better alignment to college readiness expectations. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §111.23, §111.24

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c).

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.008.

#### §111.23. *Mathematics, Grade 7.*

(a) (No change.)

(b) Knowledge and skills.

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

(4) Patterns, relationships, and algebraic thinking. The student represents a relationship in numerical, geometric, verbal, and symbolic form. The student is expected to:

(A) generate formulas involving unit conversions within the same system (customary and metric), perimeter, area, circumference, volume, and scaling;

(B) graph data to demonstrate relationships in familiar concepts such as conversions, perimeter, area, circumference, volume, and scaling; and

(C) use words and symbols to describe the relationship between the terms in an arithmetic sequence (with a constant rate of change) and their positions in the sequence.

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

(10) Probability and statistics. The student recognizes that a physical or mathematical model (including geometric) can be used to describe the experimental and theoretical probability of real-life events. The student is expected to:

(A) construct sample spaces for simple or composite experiments; and

(B) find the probability of independent events.

(11) (No change.)

(12) Probability and statistics. The student uses measures of central tendency and variability [range] to describe a set of data. The student is expected to:

(A) describe a set of data using mean, median, mode, and range; and

(B) choose among mean, median, mode, or range to describe a set of data and justify the choice for a particular situation.

(13) - (15) (No change.)

#### §111.24. *Mathematics, Grade 8.*

(a) (No change.)

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student understands that different forms of numbers are appropriate for different situations. The student is expected to:

(A) compare and order rational numbers in various forms including integers, percents, and positive and negative fractions and decimals;

(B) select and use appropriate forms of rational numbers to solve real-life problems including those involving proportional relationships;

(C) approximate (mentally and with calculators) the value of irrational numbers as they arise from problem situations (such as  $\pi$ ,  $\sqrt{2}$ ); ~~and~~

(D) express numbers in scientific notation, including negative exponents, in appropriate problem situations; and [-]

(E) compare and order real numbers with a calculator.

(2) Number, operation, and quantitative reasoning. The student selects and uses appropriate operations to solve problems and justify solutions. The student is expected to:

(A) select appropriate operations to solve problems involving rational numbers and justify the selections;

(B) use appropriate operations to solve problems involving rational numbers in problem situations;

(C) evaluate a solution for reasonableness; and

(D) use multiplication by a given constant factor (including unit rate) to represent and solve problems involving proportional relationships including conversions between measurement systems .

(3) - (11) (No change.)

(12) Probability and statistics. The student uses statistical procedures to describe data. The student is expected to:

(A) use variability (range, including interquartile range (IQR)) and select the appropriate measure of central tendency [range] to describe a set of data and justify the choice for a particular situation;

(B) draw conclusions and make predictions by analyzing trends in scatterplots; and

(C) select and use an appropriate representation for presenting and displaying relationships among collected data, including line plots, line graphs, stem and leaf plots, circle graphs, bar graphs, box and whisker plots, histograms, and Venn diagrams, with and without the use of technology.

(13) - (16) (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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## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§111.33, 111.34, 111.36

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c); and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.008, and 28.025.

§111.33. *Algebra II (One-Half to One Credit).*

(a) (No change.)

(b) Knowledge and skills.

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

(6) Quadratic and square root functions. The student understands that quadratic functions can be represented in different ways and translates among their various representations. The student is expected to:

(A) determine the reasonable domain and range values of quadratic functions, as well as interpret and determine the reasonableness of solutions to quadratic equations and inequalities;

(B) relate representations of quadratic functions, such as algebraic, tabular, graphical, and verbal descriptions; and

(C) determine a quadratic function from its roots (real and complex) or a graph.

(7) - (11) (No change.)

§111.34. *Geometry (One Credit).*

(a) (No change.)

(b) Knowledge and skills.

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

(8) Congruence and the geometry of size. The student uses tools to determine measurements of geometric figures and extends measurement concepts to find perimeter, area, and volume in problem situations. The student is expected to:

(A) find areas of regular polygons, circles, and composite figures;

(B) find areas of sectors and arc lengths of circles using proportional reasoning;

(C) derive, extend, and use the Pythagorean Theorem; [and]

(D) find surface areas and volumes of prisms, pyramids, spheres, cones, cylinders, and composites of these figures in problem situations; and [-]

(E) use area models to connect geometry to probability and statistics; and

(F) use conversions between measurement systems to solve problems in real-world situations.

(9) - (11) (No change.)

§111.36. *Mathematical Models with Applications (One-Half to One Credit).*

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

(c) Knowledge and skills.

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

(3) The student develops and implements a plan for collecting and analyzing data (qualitative and quantitative) in order to make decisions. The student is expected to:

(A) formulate a meaningful question, determine the data needed to answer the question, gather the appropriate data, analyze the data, and draw reasonable conclusions;

(B) communicate methods used, analyses conducted, and conclusions drawn for a data-analysis project by written report, visual display, oral report, or multi-media presentation; and

(C) determine the appropriateness of a model for making predictions from a given set of data.

(4) - (9) (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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Cristina De La Fuente-Valadez

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Texas Education Agency

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## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 10. TEXAS WATER DEVELOPMENT BOARD**

#### **CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS**

The Texas Water Development Board (Board) proposes amendments to §363.16, regarding Pre-design Funding Option, and §363.1005, regarding Approval of Engineering Feasibility Report.

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS**

Currently, §363.16 and §363.1005 do not provide for a Board commitment under the pre-design funding option to fund the planning, design, and construction of storage acquisition and state participation projects, including reservoirs. The original purpose of this limitation was an effort to cull out projects due to very limited funds. It resulted in only projects with completed environmental assessments and preliminary engineering reports being eligible to receive a commitment for construction funds. With expanded funding for State Water Plan projects, it is necessary to remove this restriction, which is accounting for reduced demand for these funds. The Water Infrastructure Fund, which doesn't have the same restriction, currently is over-subscribed for the same period of time. Thus, the purpose of these amendments is to provide more flexibility for the Board to commit to storage acquisition and state participation projects, including reservoirs.

#### **SECTION BY SECTION DISCUSSION**

The proposed amendment to §363.16(b) deletes storage acquisition, state participation, and reservoir projects from the list of financial assistance programs that are currently not eligible for the pre-design funding option. The purpose of allowing for pre-design funding of storage acquisition and state participation projects is to make funding more accessible and thus encourage the use of these funding programs. Currently, applicants for storage acquisition and state participation funding cannot obtain a Board commitment until a certain amount of planning has been completed because these types of projects are not eligible for the pre-design funding option under §363.16. The proposed amendments to §363.16 and §363.1005 will allow the Board to provide funds under the pre-design funding option to applicants from the Board's storage acquisition program and state participation pro-

gram, including reservoir projects. The pre-design funding option will allow the Board to make a commitment for all phases of a project, and to release funds for planning, design, and construction after the prerequisites have been met for each phase, as specified in the terms of the Board's commitment.

The proposed amendment to §363.1005(a) clarifies that the Executive Administrator must approve the engineering feasibility report before presenting a State Participation application to the Board for commitment, except for pre-design funding. The Board does not make a commitment to fund State Participation projects until the engineering feasibility report is approved in accordance with §363.1005, which means that the appropriate environmental determinations have been completed, the project has been determined to be cost effective, and the applicant has agreed to incorporate all mitigating measures directed by the Executive Administrator. The proposed amendment to §363.1005 will allow for a Board commitment to fund a State Participation project under the pre-design option without the Executive Administrator first approving the engineering feasibility report. Under §363.16(e) and §363.43(b), the Board will release funds for planning, loan issuance, and capitalized interest without first approving the engineering feasibility report, but the Board will not release funds for design until the preliminary engineering feasibility report has been approved.

#### **FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS**

Greg Kuchy, Deputy Executive Administrator, has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendments.

#### **PUBLIC BENEFITS AND COSTS**

Mr. Kuchy also has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the amended sections because it will clarify and enhance the efficiency of the Board's operations and will impose no new requirements on the public or persons required to comply with the sections.

#### **LOCAL EMPLOYMENT IMPACT STATEMENT**

The Board has determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amended sections. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the amendments as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### **REGULATORY IMPACT ANALYSIS**

The Board has determined that the proposed amendments are not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

#### **TAKINGS IMPACT ASSESSMENT**

The Board has determined that the promulgation and enforcement of the proposed amendments will constitute neither a statutory nor a constitutional taking of private real property. The proposed amendments do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or perma-

nently, because this proposed amendments do not burden nor restrict or limit the owner's right to property. More specifically, this proposal implements water conservation measures and reporting requirements which do not impose any burdens or restrictions on private real property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMITTAL OF COMMENTS

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax to (512) 463-5580.

### SUBCHAPTER A. GENERAL PROVISIONS DIVISION 2. GENERAL APPLICATION PROCEDURES

#### 31 TAC §363.16

##### STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§363.16. *Pre-design Funding Option.*

(a) (No change.)

(b) Flood control~~;~~ storage acquisition and state participation, reservoir, and municipal solid waste projects are not eligible for funding under this option.

(c) - (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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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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### SUBCHAPTER J. STATE PARTICIPATION PROGRAM

#### 31 TAC §363.1005

##### STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§363.1005. *Approval of Engineering Feasibility Report.*

(a) Except for financial assistance provided through the pre-design funding option under §363.16 of this title (relating to Pre-design Funding Option), the executive administrator must approve the engineering feasibility report before the executive administrator determines that the application is complete and presents it to the board for a commitment. The executive administrator will approve the engineering feasibility report after determining that the items listed in §363.1004(10) of this title (relating to Application for Assistance) have been completed, the appropriate environmental determinations have been completed in accordance with §363.14 of this title (relating to Environmental Assessment), the project has been determined to be cost effective, and the financial assistance recipient has agreed to incorporate all mitigating measures directed by the executive administrator.

(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.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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### SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS

#### DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

##### 31 TAC §§363.503 - 363.506, 363.510

The Texas Water Development Board (Board) proposes amendments to §§363.503 - 363.506 and 363.510, relating to the Economically Distressed Areas Program.

##### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Currently, §§363.503 - 363.506 and 363.510 describe requirements related to applications for funding from the Economically Distressed Areas Program (EDAP). These proposed amendments clarify eligibility criteria, repeal unnecessary provisions, and make other non-substantive revisions.

##### SECTION BY SECTION DISCUSSION

Section 363.503. The Board proposes an amendment to §363.503(1)(B) - (E), and §363.503(2)(B) and (C), to clarify the definitions of inadequate water service and inadequate sewer service. Under the current rule, water service is inadequate to meet the minimal needs of the residential users in an economically distressed area if the board determines that water service: (A) does not exist or is not provided; (B) is provided by a community water system that does not meet drinking water standards established by the Texas Commission on Environmental Quality (TCEQ) and set forth in applicable portions of 30 TAC Chapter 290, Subchapter F; (C) is provided by individual wells, which after treatment, do not meet drinking water standards established by the TCEQ and set forth in

applicable portions of 30 TAC Chapter 290, Subchapter F; or (D) does not meet applicable water quality standards of any other governmental unit with jurisdiction over such area.

The water service is also considered inadequate if the project area is identified in the water plan as having a water supply need and the project to address that need is identified as a recommended strategy in the water plan.

The specific references to TCEQ drinking water standards in the rule limit the standards applied to the water service in question to water quality standards, while questions of water system capacity, found in 30 TAC Chapter 290, Subchapter D, such as water pressure standards, are omitted. Increasingly, the Board encounters applications where water pressure in the system or other water supply and delivery problems do not meet TCEQ standards for public water supply for reasons that go beyond mere failure to perform routine maintenance on the system. The current rules do not allow for consideration of such system capacity inadequacies; nor are the rules easily able to incorporate changes when TCEQ modifies or moves its rules.

The Board proposes deleting each of the phrases in §363.503(1)(B) and (C) that follows "commission" and begins "as set forth". The proposed amendment will permit the Board to fund a range of public works system improvements that are consistent with the intent of the statute. In addition, the proposed amendment will allow for changes by TCEQ to its rules without requiring a correlative rule amendment by the Board.

The Board also proposes to delete the phrase "water quality" from §363.503(1)(D) and add the words "drinking water" following the word "applicable." As with the changes discussed above, this proposed amendment will permit the Board to consider funding water system issues under the concept of inadequate water service that it currently cannot consider.

In addition, the Board proposes to amend §363.503(1)(E) by adding the qualifiers "state and regional" to clarify the reference to the water plan, and by adding the sentence: "Projects brought under this subparagraph shall follow the procedures outlined in Subchapter A of this chapter (relating to General Provisions) and paragraphs (3) and (4) of this section and §363.504 of this subchapter (relating to Required Application Information)." The purpose of this addition is to clarify the application criteria and procedures under which a project identified in the state water plan and appropriate regional water plan in an economically distressed area may qualify for financing. The proposed language will make such applications consistent with statutory requirements for economically distressed area financing and with the legislative directives from the 80th Legislature, Regular Session.

The Board proposes to make similar changes to §363.503(2)(B) and (C), the definition of inadequate sewer service. The current paragraph (2) refers to specific sections of the TCEQ rules. Should the TCEQ change, repeal, consolidate or move its rules related to minimum standards for public sewer service and on-site sewage facilities, the Board would likewise have to amend its rules. The proposed amendment eliminates that unnecessary administrative burden.

Finally, the Board proposes to amend §363.503(4)(A) by deleting the phrase "derived from a common tract." Section 363.503(4)(A) offers two ways to determine whether an established residential subdivision was located in an economically distressed area on June 1, 2005. One method is by examining plat records of the county. The second method is to look for indicia of common usage among multiple residential lots. The

current rule describes those lots as "derived from a common tract." This language suggests that the lots must have been part of a single larger tract at some previous time. The criterion could thus impose a burden on the applicant to go back through land records until the properties in question could be tied to a common owner or be excluded from the lots being considered in the applications. The language could result in the exclusion of lots that, for example, may be on the opposite side of a road or street, or are derived from an adjacent tract, but that are nevertheless part of an identified community (i.e., use a common road, bear similar easements, and are connected to the same utility system). The Board recommends deleting the phrase because the language is not helpful in determining the existence of an established subdivision.

Section 363.504. The Board proposes amending §363.504 by deleting subsection (b). Originally, subsection (b) was added to address circumstances arising under Local Government Code §232.071. Section 232.071 states that Chapter 232, Subchapter C of the Local Government Code applies only to the subdivision of land located: (1) outside the corporate limits of a municipality; and (2) in a county in which is located a political subdivision that is eligible for and has applied for financial assistance under §15.407, Texas Water Code, or Subchapter K, Chapter 17, Texas Water Code, and to which Subchapter B of Chapter 232 does not apply. This provision was previously interpreted to mean that a county could not adopt and enforce the model subdivision rules until a political subdivision within the county submitted an application for financial assistance and the board determined that the county had an economically distressed area.

According to available Board records, no county has asked to apply the provisions of §363.504(b). In fact, the ambiguous phrasing of Local Government Code §232.071 has prompted concern on the part of some counties that they would be forced to adopt the model rules simply because a political subdivision in the county may be eligible for and has applied for financial assistance under EDAP, which is inconsistent with the Board's policy. Section 232.071, however, does not address authority to adopt the model rules, nor does it require a county to adopt the model rules because an economically distressed area may exist within its jurisdiction and a political subdivision wants to apply for funds under EDAP. Rather it addresses only to what counties Chapter 232, Subchapter C applies. Consequently, the Board proposes the deletion of §363.504(b).

Section 363.505. The Board proposes amendments to §363.505(a) to clarify the intent of the subsection. As currently written, subsection (a) can be interpreted to mean that funds available for projects eligible for financial assistance from the EDAP Account shall be limited to allocation in one of three stated options. Subsection (a) is revised to better indicate that, in addition to other situations, the board may provide funds from the EDAP Account when a sufficient showing is made that one of the three enumerated circumstances is present.

The proposed amendment further clarifies that the area to be served must meet the criteria and not the political subdivision that requests assistance.

Section 363.509 merely quotes §17.933(c) of the Texas Water Code. Section 17.933(c) is directed at the Water Development Board and not at the applicant political subdivisions. It is guidance to the agency in accounting for the commitments made through the EDAP program. Under the Texas Administrative Procedure Act, Texas Government Code, §2001.003(6)(A) - (C), a "rule" does not include a statement regarding only the internal

management of a state agency and not affecting private rights or procedures. Because the statute pertains to internal agency management issues and not to persons or entities outside the agency, The proposed repeal of §363.509 appears elsewhere in this issue of the *Texas Register*.

Non-substantive, editorial changes were made to §363.506 and §363.510.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Greg Kuchy, Deputy Executive Administrator, has determined that for the first five year period the amendments are in effect there will be no fiscal implications for state or local governments as a result of the proposed rulemaking.

#### PUBLIC BENEFITS AND COSTS

Mr. Kuchy also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking because it will clarify and enhance the efficiency of the Board's operations and will impose no new requirements on the public or persons required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The Board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### REGULATORY IMPACT ANALYSIS

The Board has determined that the proposed rulemaking is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that the promulgation and enforcement of these proposed rule amendments will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule amendments do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this proposed rulemakings does not burden nor restrict or limit the owner's right to property. More specifically, this proposed rulemaking implements water conservation measures and reporting requirements which do not impose any burdens or restrictions on private real property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580.

#### STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

#### CROSS REFERENCE TO STATUTE

Texas Water Code Chapters 15, 16, and 17.

#### §363.503. *Determination of Economically Distressed Area.*

To determine that an area is economically distressed, the board shall consider information and data presented with the application or otherwise available to the board to determine that the water or sewer services are inadequate to meet the minimal needs of residential users; that the financial resources of the residential users of the services are inadequate to provide water or sewer services that will satisfy those minimal needs; and that an established residential subdivision was located in the economically distressed area on June 1, 2005.

(1) Water service is inadequate to meet the minimal needs of the residential users in ~~an~~ an economically distressed area if the board determines that water service:

(A) does not exist or is not provided;

(B) is provided by a community water system that does not meet drinking water standards established by the commission ~~and set forth in applicable portions of 30 TAC Chapter 290, Subchapter F~~];

(C) is provided by individual wells ~~that, which~~ after treatment, do not meet drinking water standards established by the commission ~~and set forth in applicable portions of 30 TAC Chapter 290, Subchapter F~~]; or

(D) does not meet applicable drinking water ~~quality~~ standards of any other governmental unit with jurisdiction over such area.

(E) The water service is considered inadequate if the project area is identified in the water plan as having a water supply need and the project to address that need is identified as a recommended strategy in the state and regional water plan. Projects brought under this subparagraph shall follow the procedures outlined in Subchapter A of this chapter (relating to General Provisions) and paragraphs (3) and (4) of this section and §363.504 of this subchapter (relating to Required Application Information).

(2) Sewer service is inadequate to meet the minimal needs of residential users in ~~an~~ an economically distressed area if the board determines that sewer service:

(A) does not exist or is not provided;

(B) is provided by an organized sewage collection and treatment facility that does not comply with the standards and requirements established by the commission ~~and set forth in 30 TAC Chapter 347~~];

(C) is provided by on-site sewerage facilities that do not comply with the standards and requirements established by the commission ~~and set forth in 30 TAC Chapter 285~~]; or

(D) does not meet applicable wastewater standards of any other governmental unit with jurisdiction over such area.

(3) The financial resources of the residential users in ~~an~~ the economically distressed area are inadequate to provide the needed services if the board finds that the area to be served by a proposed project has a median household income that is not greater than 75% of the median state household income for the most recent year for which statistics are available.

(4) An established residential subdivision was located in the economically distressed area on June 1, 2005, if the board determines the following:

(A) either a plat of the area is recorded in the county plat or deed records; or a pattern of subdivision, without a recorded plat, is evidenced by the existence of multiple residential lots ~~[derived from a common tract]~~ with roads, streets, utility easements, or other such incidents of common usage or origin;

(B) at least one occupied residential dwelling existed within the platted or subdivided area on June 1, 2005, and

(C) such other factors as may be determined relevant by the board.

(5) The boundary or limits of a water or sewage project to serve an economically distressed area may be determined by:

(A) a subdivision plat prepared by a registered engineer, whether recorded or not;

(B) a metes and bounds description, natural boundaries, roads, or other natural features that delineate an unplatted area within which a feasible cost-effective project can be developed; or

(C) inclusion of occupied dwellings with inadequate water or wastewater services in close proximity to an economically distressed area ~~determined [delineated]~~ as provided in paragraph (4) of this section [above in a project area] when such dwellings can be feasibly served by the [a] proposed project [within which a feasible cost effective project can be developed].

*§363.504. Required Application Information.*

~~[(a)]~~ An application for planning, acquisition, design, construction, or a combination thereof, shall be in the form and numbers prescribed by §363.12 of this title (relating to General, Legal, and Fiscal Information). Applications will be considered by the board on the basis and in the order that an administratively complete application, as determined by the executive administrator, is filed with the board. In addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

(1) information to establish to the satisfaction of the executive administrator that the county in which the applicant is located has adopted and is enforcing the model rules adopted by the board pursuant to Texas Water Code §16.343 (model rules) and that, if any part of the project is located within the corporate limits of a municipality or its extraterritorial jurisdiction, the municipality has adopted and is enforcing the model rules, including the following information:

(A) A copy of the subdivision regulations adopted by the county and the municipality, if applicable;

(B) From the county and the municipality, if applicable, the lesser of either the three most recently approved residential subdivision plats, or all recently approved subdivision plats, that are within the jurisdiction of the county, and, if applicable, the municipality [if applicable]; provided however that, if a county or municipality has not approved any residential subdivision plats within the last five years, [then] the county judge and mayor, if applicable, shall submit a notarized statement to such effect;

(C) A notarized statement from the county judge that:

(i) the residential subdivision regulations adopted by the county and submitted with the statement fully incorporate the model rules;

(ii) any residential subdivision plats submitted with this statement fully comply with the county regulations;

(iii) acknowledges that, if the executive administrator determines that the county is not enforcing the model rules, ~~[that]~~ all funds provided by the board under this subchapter and committed for Economically Distressed Areas Program (EDAP) projects in the county shall be suspended. ~~[; and]~~

(iv) Such [such] statement shall be considered sufficient to establish compliance with the model rules for five years unless the executive administrator identifies significant violations with the model rules and the county is unable to correct the deficiencies within 90 days of notification of the violations;

(D) If any part of the project is located within the corporate limits of a municipality or its extraterritorial jurisdiction, a notarized statement from the mayor that:

(i) the residential subdivision regulations adopted by the municipality and submitted with the statement fully incorporate the model rules;

(ii) any residential subdivision plats submitted with this statement fully comply with the municipality's regulations;

(iii) acknowledges that, if the executive administrator determines that the municipality is not enforcing the model rules, ~~[that]~~ all funds provided by the board under this subchapter and committed for EDAP projects in the municipality or its extraterritorial jurisdiction shall be suspended; and

(iv) such statement shall be considered sufficient to establish compliance with the model rules for five years unless the executive administrator identifies significant violations with the model rules and the municipality is unable to correct the deficiencies within 90 days of notification of the violations;

(E) If the county or municipality, if applicable, has ~~[have]~~ only been required or authorized to adopt residential subdivision rules that enforce the model rules within one year of the submission of the application, the executive administrator may require that each member of the applicable governing body:

(i) complete a course of training of not more than two hours on the implementation of the model rules prepared and provided by the executive administrator in a widely available medium at no cost; and

(ii) provide a notarized statement that the member has completed the training.

(2) Any relevant data or information identified in §355.73(b) of this title (relating to Scope of Facility Plan) that may be requested by the board or the executive administrator.

(3) a proposed project schedule and budget that includes estimated project costs and identifying the source of funds;

(4) a resolution from its governing body which shall:

(A) request financial assistance and identify the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to submit the application, appear before the board on behalf of the applicant, and submit such other documentation as may be required by the executive administrator or the board;

(5) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Texas Government Code, §§551.001, et seq.) and after providing all such notice as required by such Act as is applicable to the applicant or, for a corporation, that the decision to request financial assistance from the board was made in a meeting open to all customers and after providing all customers written notice at least 72 hours prior to such meeting that a decision to request public assistance would be made during such meeting;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature by EPA, the commission, Texas Comptroller, Texas Secretary of State, or any other federal, state or local government or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding for the applicant;

(D) the applicant warrants compliance with the representations made in the application in the event that the board provides the financial assistance; and

(E) the applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(6) copies of any proposed or existing contracts with any appropriate consultants such as financial advisory, engineering, general counsel and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(7) a citation to the specific legal authority in the Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the applicant as may be deemed necessary by the executive administrator;

(8) if the applicant provides or will provide water supply or treatment or sewer service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing; and

(9) documentation of the ownership interest, with supporting legal documentation, of property on which proposed project shall be located, or if the property is to be acquired, certification that the applicant has the necessary legal power and authority to acquire the property.

~~[(b) Pursuant to Texas Local Government Code §232.071, the authority of a county to adopt and enforce the model rules may be subject to a political subdivision within such county submitting an application for financial assistance under Texas Water Code, Chapter 17, Subchapter K. If an economically distressed area is located within such a county, the following rules apply.]~~

~~[(1) If the board has funds available to provide the financial assistance to political subdivisions under Texas Water Code, Chapter 17, Subchapter K, the applicant shall submit:]~~

~~[(A) all information required by subsection (a) of this section except for the information required pursuant to subsection (a)(1) of this section;]~~

~~[(B) upon the determination by the executive administrator that the information provided complies with the requirements of subsection (a)(2) of this section, the board shall consider the information submitted by the applicant;]~~

~~[(C) if the board determines that there is an economically distressed area identified in the county, the board will issue a written resolution finding that such an area exists in the county; and]~~

~~[(D) the applicant must submit the information required by subsection (a)(1) of this section within 90 days of the determination by the board.]~~

~~[(2) If the board does not have funds available to provide financial assistance to political subdivisions under Texas Water Code, Chapter 17, Subchapter K, a political subdivision may submit:]~~

~~[(A) all information required by subsection (a)(2) of this section;]~~

~~[(B) upon the determination by the executive administrator that the information provided complies with the requirements of subsection (a)(7) of this section, the board shall consider the information submitted by the political subdivision; and]~~

~~[(C) if the board determines that there is an economically distressed area identified in the county, the board will issue a written resolution finding that such an area exists in the county.]~~

#### *§363.505. Application Review and Assistance Conditions.*

(a) The funds available for projects eligible for financial assistance from the Economically Distressed Areas Program Account under this subchapter shall be determined by the board. In addition, the board may consider providing assistance to political subdivisions under the following conditions [and are additionally allocated as follows]:

(1) to serve areas [political subdivisions] that have median household incomes that are not greater than 75% of the state median household income for the most recent year for which statistics are available ~~are [and that serve areas]~~ outside metropolitan statistical areas and have populations of less than 5,000, and where the project is recommended through the state and regional water plan [for projects that implement the water plan and];

(2) to serve areas [political subdivisions] that have median household incomes that are not greater than 75% of the state median household income for the most recent year for which statistics are available and where the project is recommended through the state and regional water plan; or [for projects that implement the water plan];

(3) to serve areas [political subdivisions] that have median household incomes that are not greater than 75% of the state median household income for the most recent year for which statistics are available ~~are [and that serve areas]~~ outside metropolitan statistical areas and have populations of less than 5,000.

(b) An application for construction funding shall include all the requirements in §363.504[(a)] of this title (relating to Required Application Information) as well as a facility plan that includes all of the facility engineering data, studies, and analysis and any other relevant data or information as may be requested by the board or the executive administrator.

(c) The board may provide financial assistance from the Economically Distressed Areas Program Account for the following construction activities as defined in Texas Water Code §17.001(8):



(1) The board may provide financial assistance for which no repayment is required for costs necessary to provide water or sewer services to economically distressed areas for the following activities:

(A) preliminary planning, including contingencies as determined by the board, to determine the feasibility of a water supply project, wastewater treatment works, or flood control measures;

(B) engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions; and

(C) the expense of any acquisition, condemnation or other legal proceedings associated with real property acquisitions. [5]

(D) The grant agreement may contain provisions for the board to retain a minimum of 15% of the progress payments otherwise due to the applicant until the funded deliverable, as defined in the grant agreement, is substantially complete and is authorized by the executive administrator.

(2) Upon approval by the executive administrator of the completion of activities identified in paragraph (1) of this subsection, the board may provide financial assistance in the amount and manner provided in §363.506 of this title (relating to Calculation of Financial Assistance) for costs necessary to provide water or sewer services to economically distressed areas for the following activities:

(A) construction including erecting, building, acquiring, altering, remodeling, improving, acquiring or extending a water supply project or water services, treatment works or sewer services or facilities; and

(B) the inspection or supervision of any of the items listed herein.

(d) The board shall set the terms of the financial assistance provided under subsection (c) of this section, and such terms may be extended at the sole discretion of the board.

§363.506. *Calculation of Financial Assistance.*

(a) The board's financial assistance will be determined by the provisions of this section, including calculating:

(1) capacity within the applicant's existing water or wastewater plants and associated facilities which will be funded by the board to serve the project area. The amount of financial assistance for existing system capacity shall be based on the percentage of the system capacity necessary to serve the project area. The percentage of system capacity for the project is then multiplied by the historical plant cost to the utility. This amount will be paid directly by the board in grant funds upon completion of construction and acceptance of the project to the extent other funds and system revenues are not sufficient to pay for such capacity; and

(2) revenue available for payment of debt service. The board will determine the revenue available for payment of debt service by using the appropriate method specified in either subparagraph (A) or (B) of this paragraph.

(A) Upon the submission of evidence satisfactory to the executive administrator that the rates, fees and charges to the average customer to be served by the project will be the same as the rates, fees, and charges that other families of similar income who are similarly situated pay for comparable services, the revenue available for payment of debt service will be either:

(i) the regional capital component benchmark multiplied by the estimated number of LUEs of the area to be served at the end of construction of the proposed project less other debt incurred by

the provider utility attributable to the overall project proposed in the application to the board; or

(ii) for existing systems with a capital component of greater than zero and which are extending service to an area to which the provider utility has not previously provided service the capital component multiplied by the estimated number of LUEs of the area to be served at the end of construction of the proposed project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the board.

(B) If there is insufficient satisfactory evidence that there are other families of similar income who are similarly situated paying the same rates, then the revenue available for debt service will be either:

(i) the regional payment benchmark multiplied by the regional capital component benchmark of the same water or service providers used to determine the regional payment benchmark multiplied by the estimated number of LUEs in the project area at the end of construction of the project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the board; or

(ii) for existing systems with a capital component of greater than zero and which are extending service to an area to which the provider utility has not previously provided service the revenue available for payment of debt service will be the payment rate of the provider utility multiplied by the capital component of the provider utility multiplied by the estimated number of LUEs in the project area at the end of construction of the project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the board; and

(3) for applications requesting an increase in the amount of financial assistance previously provided by the board for the project under this program, the amount of the increase for which repayment will be required will be the greater of:

(A) an amount equal to the amount of the loan of the financial assistance provided by the board in its first commitment for the project divided by the total amount of the financial assistance provided by the board in its first commitment for the project multiplied by the amount of the additional financial assistance request under consideration by the board; or

(B) an amount equal to the amount of the loan that would have resulted by applying the provisions of paragraph (2) of this subsection to the total project area, less the amount of the loan portion of the financial assistance provided by the board in its previous commitments for the project under this subchapter.

(b) In determining the amount and form of financial assistance and the amount and form of repayment, the board also will consider sources of funding available to the applicant from federal and private funds, and from other state funds, as well as any other sources of funds available to the applicant if the economically distressed area to be served by the board's financial assistance is within the boundary of the applicant, and the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code.

(c) If the amount of financial assistance for which repayment is not required exceeds 50% of the total amount of financial assistance requested from the Economically Distressed Areas Program, the applicant shall provide a finding from the Texas Department of Health that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. If the applicant is unable to provide a finding by the Texas Department of Health that there exists nuisance condi-

tions dangerous to the public health and safety resulting from the water supply and sanitation problems of the project area, the amount of financial assistance for which repayment is required shall be either the amount determined pursuant to subsection (a)(2) of this section or 50% of the financial assistance requested under this subchapter, whichever is greater.

(d) In lieu of using the calculations or considerations provided in subsections (a) and (b) of this section to determine the amount and form of financial assistance, the board may provide financial assistance in the form of a grant to an applicant requesting financial assistance to acquire a proposed project that meets the requirements of this section. Prior to construction of the proposed project, the applicant shall submit an application that includes:

(1) a facility plan that meets the requirements of 31 TAC §355.73 and particularly includes an amount identified as total conventional project costs which is the cost to construct the project without the labor of the residents of the area;

(2) sufficient evidence that the residents of the area to be served by the proposed project will contribute labor to the construction of the system or other cost savings such that the actual cost of the project is 60% of the total conventional project costs;

(3) information which establishes that the residents will contribute funds in an amount not less than 10% of the total actual project cost including the amount necessary to purchase capacity in the treatment plant and/or related facilities to which the completed system will be connected;

(4) a resolution from the eligible political subdivision that it will prepare or review plans and specifications of the proposed system to ensure service by the applicant;

(5) a resolution from the eligible political subdivision that it will inspect or provide for inspection of the system during construction to ensure that it is constructed in accordance with plans and specifications; and

(6) information which adequately identifies an amount necessary for the purchase of capacity in the treatment plant and/or related facilities to which the system will be connected, if applicable.

§363.510. *Financial, Managerial, and Technical Training Requirements.*

(a) The board may determine or request that the commission make a determination that an operating entity complete training to obtain the necessary financial, managerial, or technical capacity to ensure the project will provide adequate water or wastewater service or to maintain the financial viability of the provider utility in any of the following circumstances:

(1) upon receipt of an application from the provider utility for financial assistance under this subchapter;

(2) upon receipt of a request for amendment to the financial assistance commitment previously provided to the provider utility;

(3) upon a determination of the board that the provider utility which has received a commitment of financial assistance under this subchapter has failed to provide the board documentation required under state law, board rule, bond covenant or the grant agreement for the financial assistance provided by the board; or

(4) upon receipt of notification that the commission has determined that the provider utility has a history of compliance problems or that the commission has assessed a penalty in an enforcement action against the provider utility.

(b) The board may determine that an operating entity will be required to undertake financial, managerial, or technical training based on an assessment performed by the commission or an assessment performed by the executive administrator and approved by the board. In the event that the executive administrator prepares the assessment, the assessment as provided to the board will consist of:

(1) a summary of any documentation and information reviewed by the executive administrator relating to or developed for:

(A) an application for financial assistance from the provider utility;

(B) a request by the provider utility for an amendment to the terms or conditions of the financial assistance provided to the provider utility;

(C) compliance efforts of the provider utility with criteria and requirements identified in applicable state or federal law, board rule, bond covenants, loan agreements, or grant agreements; and

(D) any communication with the operating entity of the provider utility or its staff; and

(2) a recommendation from the executive administrator specifically identifying:

(A) any particular financial, managerial, or technical capability that the entity may lack;

(B) the basis for concluding that the entity lacks such capability by referencing the applicable state or federal law, board rule, and bond or grant agreement covenants and the action taken by the entity that suggests that training would be useful;

(C) the appropriate training course or curriculum from the approved training program and provider list; and

(D) the positions at the operating entity, whether governing body and/or employees of the operating entity, required to take the training.

(c) Upon review of an assessment by the commission or a assessment by the executive administrator recommending that training be required of an operating entity, the board will determine whether the governing body or employees of an operating entity shall be required to complete a course of training.

(1) In considering the action to be taken by the board on the assessment, the board may:

(A) decline to approve an application for financial assistance or the request for amendment to the terms or conditions of the financial assistance submitted by the provider utility based on the assessment provided to the board or for any reason identified by the board;

(B) table the action requested of the board by the operating entity based on the determination that the operating entity should complete training and that further action by the board on the request will be postponed until such time as the provider utility submits a certificate of completion of training;

(C) approve the action requested of the board by providing that the action of the board will not be implemented or performed until such time as the executive administrator is provided a certificate of completion of the required training;

(D) approve the request of the provider utility; or

(E) take such action as determined by the board.

(2) If an operating entity is required to complete training as part of the action taken by the board, the board will identify the financial, managerial, or technical capability which is to be addressed by the training and the course curriculum that the operating entity must complete.

(3) The provider utility which has an operating entity that is required to complete training as part of the action taken by the board will:

(A) select the training provider from the board approved list of training providers for required training curricula or request that the board approve an alternative curriculum or training provider by submitting to the board a proposed alternative curriculum or training provider, together with sufficient documentation for the board to evaluate the curriculum or training provider;

(B) make arrangements, including payment, with the selected training provider and assume the responsibility of insuring that the operating entity complete the training required by the board; and

(C) submit a certificate of completion from the approved training provider to the executive administrator. Upon receipt of the certificate of completion, the executive administrator shall take such actions as directed by the board in its resolution on the action requested by the provider utility.

(d) At such intervals as determined by the board, the board will consider and may approve a list of training providers that can provide any required financial, managerial, and technical training. In addition to any other information the board deems ~~determined~~ necessary or appropriate ~~[by the board]~~, the list shall identify:

(1) training providers identified by name and contact information that currently provide training that is intended to improve financial, managerial, or technical capabilities of water and wastewater utilities;

(2) the course curriculum offered by the training providers;

(3) which managerial, financial, or technical capability that the training addresses; and

(4) the method by which the training provider will determine that the operating entity has satisfactorily completed the required curriculum.

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 December 1, 2008.

TRD-200806231

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 11, 2009

For further information, please call: (512) 463-8061



### 31 TAC §363.509

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

The Texas Water Development Board (Board) proposes the repeal of §363.509, relating to the Minimum Total Loans in the Economically Distressed Areas Program.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Currently, §§363.503 - 363.506 and 363.510 describe requirements related to applications for funding from the Economically Distressed Areas Program (EDAP). Amendments to these provisions are proposed elsewhere in this issue of the *Texas Register* to clarify eligibility criteria, repeal unnecessary provisions, and make other non-substantive revisions. Section 363.509 is proposed for repeal as a part of these revisions to 31 TAC Chapter 363.

### SECTION BY SECTION DISCUSSION

Section 363.509 merely quotes §17.933(c) of the Texas Water Code. Section 17.933(c) is directed at the Water Development Board and not at the applicant political subdivisions. It is guidance to the agency in accounting for the commitments made through the EDAP program. Under the Texas Administrative Procedure Act, Texas Government Code, §2001.003(6)(A) - (C), a "rule" does not include a statement regarding only the internal management of a state agency and not affecting private rights or procedures. Because the statute pertains to internal agency management issues and not to persons or entities outside the agency, this provision is proposed for repeal.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Greg Kuchy, Deputy Executive Administrator, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of the proposed rulemaking.

### PUBLIC BENEFITS AND COSTS

Mr. Kuchy also has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the rulemaking because it will clarify and enhance the efficiency of the Board's operations and will impose no new requirements on the public or persons required to comply with the repeal.

### LOCAL EMPLOYMENT IMPACT STATEMENT

The Board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of this repeal. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. Therefore, no regulatory flexibility analysis is necessary.

### REGULATORY IMPACT ANALYSIS

The Board has determined that the proposed repeal is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

### TAKINGS IMPACT ASSESSMENT

The Board has determined that the promulgation and enforcement of this proposed repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed

repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this proposed repeal does not burden nor restrict or limit the owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS

Comments on the proposed repeal will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580.

#### STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Water Code §6.101, which authorizes the board to propose and adopt rules necessary to carry out the powers and duties of the board.

#### CROSS REFERENCE TO STATUTE

Texas Water Code Chapters 15, 16, and 17.

§363.509. *Minimum Total Loans.*

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 December 1, 2008.

TRD-200806232

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 11, 2009

For further information, please call: (512) 463-8061



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER A. PRACTICE AND PROCEDURE

###### 34 TAC §§9.106 - 9.108

The Comptroller of Public Accounts proposes new §§9.106 - 9.108, concerning the report and certification of appraisals conducted or developed for the property value study. The new rules are proposed to clarify for the public, appraisal districts, and school districts the reporting and certification required of property value study appraisers who appraise property for use in the property value study.

The proposed new rules will clarify that there is only one client for each property value study appraisal, and that client also is the only intended user of a property value study appraisal. The new rules will make explicit the comptroller's position concerning the jurisdictional exception provided by the Uniform Standards of

Professional Appraisal Practices. The new rules clarify that persons, including parties to an appeal of property value study findings, who receive a copy of a property value study appraisal due to the comptroller's compliance with any disclosure or discovery requirements, are not intended users of a property value study appraisal. New §9.108 would serve as the appraisal report and certification for any and all appraisals conducted or developed for the property value study.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules 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 rules are in effect, the public benefit anticipated as a result of enforcing the rules will be by clarifying certain administrative elements of the property value study. The proposed rules will have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed new rules may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528 or by e-mail at buddy.breivogel@cpa.state.tx.us.

The new rules are proposed under Texas Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The new rules implement Texas Government Code, §403.302, which requires the comptroller to conduct the property value study according to generally accepted appraisal procedures and standard statistical compilation techniques.

#### §9.106. Statement of Policy.

(a) As permitted by the Uniform Standards of Professional Appraisal Practices (USPAP) Jurisdictional Exception, this subchapter sets forth the reporting and certification of all appraisals developed for use in the property value study. To the extent that any part of USPAP is contrary to this subchapter, this subchapter is effective and the contrary USPAP part has no meaning, force, or effect and is void as to property value study appraisals developed by appraisers employed by the comptroller or contract appraisers who develop property value study appraisals.

(b) Appraisers who develop property value study appraisals for use in the property value study are not subject to USPAP provisions that conflict with this title, subchapter, state statutory and administrative law, federal statutory and administrative law, or comptroller policies and procedures, whether written or unwritten.

(c) Appraisals of minerals, utilities, and agricultural and timber land may be accompanied by a separate report and certification.

(d) In this subchapter:

(1) the term "appraiser" includes appraisers employed by the comptroller and contract appraisers;

(2) the term "appraisal" refers to appraisals developed for the property value study; and

(3) the terms "develop," "conduct," and "perform" are synonymous when used to modify the terms "appraisal" or "appraisals" or when used in reference to the function of a property value study appraiser employed by the comptroller or a contract property value study appraiser.

(e) This subchapter applies to hearings that are held to resolve protests of the preliminary findings of the property value study or an audit of property value study findings.

§9.107. Property Value Study Appraiser's Client and Intended User.

(a) The Comptroller of Public Accounts and the comptroller's designees are the property value study appraiser's client and the only intended user of a property value study appraisal. No other intended users are identified for any property value study appraisal assignment.

(b) Property value study appraisals are developed in the manner required by and according to state statute, comptroller administrative rules, and the policies, procedures and instructions issued by the comptroller or the comptroller's designees, including property value study division directors, assistant directors, managers, area managers, supervisors, and team leads and any other comptroller employee who has been tasked with performance of a management function.

(c) In accordance with USPAP Statement 9 (SMT-9), which provides that "parties who receive a copy of an appraisal, appraisal review, or appraisal consulting report as a consequence of disclosure requirements applicable to an appraiser's client do not become intended users of the report unless they were specifically identified by the appraiser at the time of the assignment," any party who receives a copy of a property value study appraisal, supporting data, or both, as a consequence of disclosure or discovery requirements applicable to the comptroller, the comptroller's designee's, or any other person, including state and federal statutory and administrative disclosure requirements, do not become intended users of the report.

(d) Property value study appraisers do not identify any other intended user at the time of assignment or otherwise, unless the intended user is specified in writing, signed by a member of property value study management.

§9.108. Appraiser's Report and Certification of Appraisal Developed for the Property Value Study.

(a) Unless a separate appraisal report and certification is prepared as permitted by §9.106(c) of this title (relating to Statement of Policy), is and shall be recognized as the report and certification of each property value study appraisal developed by property value study appraisers. A separate, individual appraisal report and certification is not required for any property value study appraisal developed for the property value study because the intended user of the report and the appraiser's client, the comptroller, does not request or require a report or certification. The comptroller's property value study appraisers and appraisers who are under contract with the comptroller for performance of duties related to the property value study, if any, are not required to produce a report and certification in addition to that provided by this section.

(b) The comptroller is not required to produce an appraisal report or appraiser certification to any person who, for any reason or purpose, receives a copy of the appraisal.

(c) The report and certification referred to in subsection (a) of this section is as follows:

(1) The client is the Texas Comptroller of Public Accounts and the comptroller's designees as provided by §9.107(a) of this title (relating to Property Value Study Appraiser's Client and Intended User). There are no other intended users. Parties who appeal the property value study preliminary findings are not intended users of property value study appraisals and are not entitled to receive an appraisal report or certification of any appraisal developed for the property value study.

(2) Appraisals used in the property value study are developed in accordance with Uniform Standards of Professional Appraisal

Practice Standards 1, 7, and 9 as appropriate, Texas statutes, comptroller rules, and written or unwritten policies, procedures, and instructions. A separate appraisal report and certifications is not required for any individual property appraised for the property value study.

(3) The data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value are retained in the appraiser's file, which, as permitted by USPAP standards, is not required to be contained in a single, physical file or location. The appraiser's file may consist of material stored in an electronic data base, contained in various types of electronic, digital, and other media, and may be in many forms.

(4) The intended use of the appraisal is as a single estimate of market value in the property value study; no other use is intended, including use by a party who appeals the preliminary findings of the property value study or an audit of property value study findings.

(5) The property appraised is identified as follows:

(A) For all categories of property except the categories addressed in subparagraphs (B) and (C) of this paragraph, the property that was appraised is identified in the property value study by the local jurisdiction account number.

(B) Oil and gas property is identified by the Texas Railroad Commission district and lease number.

(C) Railroad and utility companies are identified by the company number assigned by the comptroller's property value study personnel.

(6) The purpose of the appraisal is to estimate the market value of the fee simple interest for the property, unless otherwise noted. Market Value is defined by Tax Code, §1.04(7). Appraisals of oil and gas interests estimate market value in as defined by Tax Code, §1.04(7), as modified by Tax Code, §23.175. The effective date of the appraisal is January 1 of the subject property value study year.

(7) Relevant comparable sales, income and expense or cost data available is collected and analyzed and applied in the most appropriate and reliable approach to value in order to estimate the value of each property.

(8) The appraiser's analyses, opinions, and conclusions are their personal, impartial, and unbiased professional analyses, opinions, and conclusions.

(9) The appraisers have no present or prospective interest in properties subject to the appraisals and no personal interest with respect to the parties involved.

(10) The appraisers have no bias with respect to properties subject to the appraisals or to the parties involved with this assignment.

(11) The appraisers' engagement in the assignments is not contingent upon developing or reporting predetermined results.

(12) The appraisers' compensation for completing the assignments is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

(13) The appraisers' analyses, opinions, and conclusions were developed in conformity with the Uniform Standards of Professional Appraisal Practice, generally accepted appraisal standards, state law, comptroller rules, and comptroller policies, procedures, and instructions, whether written or unwritten.

(14) When practicable, the appraisers have made personal inspections of the properties that are the subject of the assignment. When personal inspection was impracticable, the appraisers have identified the properties by other available, reliable means, including deeds or other legal documentation, aerial photographs, land-based photographs, surveys, maps, and property sketches.

(15) The appraisers may receive assistance from team leads and supervisors and any other appraiser employed by the Property Tax Division of the comptroller's office.

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 December 1, 2008.

TRD-200806222

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: January 11, 2009

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 D. PROGRAM COMPLETION**

###### **37 TAC §85.57**

The Texas Youth Commission (TYC) proposes new §85.57, concerning Release Review Panel. The new section will establish a central office panel with the responsibility to determine whether a youth who was committed to TYC under an indeterminate commitment order and who has completed his/her minimum length of stay should be discharged from the custody of TYC, released under supervision, or given an extended length of stay. The new section will also establish a procedure for requesting reconsideration of a Release Review Panel decision.

Robin McKeever, Chief Financial Officer, has determined that for the first five-year period the new section is in effect no fiscal implications for state or local government are anticipated as a result of enforcing or administering the new section.

Karen Kennedy, Director of the Release Review Panel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with recently enacted legislative mandates, as well as the establishment of a centralized review process designed to ensure that no youth remains beyond his/her minimum length of stay unless the youth is in need of additional rehabilitation in a residential facility. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Manager of Policy and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under Human Resources Code, §61.0815, which requires the commission to establish a panel whose function is to review and determine whether a child who has completed the minimum length of stay should be discharged, released, or remain in the custody of the commission for an additional period of time. The section is also proposed under Human Resources Code §61.0816, which requires the commission to establish a process to request the reconsideration of an extension order issued by the panel.

The proposed rule implements the Human Resources Code, §61.034.

###### §85.57. Release Review Panel.

(a) Purpose. This rule establishes a release review panel to determine whether a youth who has completed his/her minimum length of stay should be discharged from the custody of the Texas Youth Commission (TYC), released under supervision, or given an extended length of stay. This rule also establishes a process to request reconsideration of an order issued by the release review panel.

(b) Applicability. This rule applies to all youth committed to the TYC without a determinate sentence who have completed the minimum length of stay and have not been released to parole or discharged from TYC custody.

###### (c) Definitions.

(1) Clear and Convincing Evidence--a standard of proof meaning that measure or degree which will produce in the mind of the trier of facts a firm belief or conviction as to the position sought to be established; more than a preponderance of the evidence, but less than beyond a reasonable doubt.

(2) Discharge--legal release from the legal jurisdiction of TYC.

(3) Extension Length of Stay--a period of time in addition to the minimum length of stay that a youth is required to remain in residential placements. An extension length of stay may only be assigned by the Release Review Panel in accordance with provisions of this rule.

(4) Minimum Length of Stay--the minimum period of time a youth is required to remain in residential placements. The minimum length of stay is assigned upon initial commitment, recommitment, or revocation of parole.

(5) Progress Review Team--the TYC residential placement staff or TYC contract placement monitoring staff who are designated by the facility to meet and assess a youth's progress in treatment programming.

(6) Release--movement to parole supervision.

(7) Release Review Panel (or Panel)--the TYC Central Office staff appointed to determine if a youth who has completed his/her minimum length of stay will be discharged, released, or given an extended length of stay.

(8) Residential Placement--a high or medium restriction facility, as defined in §85.27 of this title.

###### (d) General Provisions.

(1) Panel Members.

(A) The Panel will consist of an odd number of members appointed by the executive commissioner for terms of at least two years.

(B) Each member of the Panel must be a TYC employee who works at the TYC central office. Panel members may not be involved in any supervisory decisions concerning youth in the custody of the TYC.

(2) Evidence used by the Panel.

(A) The Panel may review any information relevant to the youth's progress and rehabilitation.

(B) A youth, the parents/guardian of a youth, victims of a youth, or any advocate chosen by a youth may submit information for the Panel's consideration. Information and arguments must be submitted to the Panel in writing on or before the expiration of the youth's minimum length of stay, or if applicable, expiration of the extension length of stay.

(C) A parent/guardian, victim, or person representing a youth may make a written request for personal communication with a member of the Panel on or before the expiration of the youth's minimum length of stay, or if applicable, expiration of the extension length of stay. The time, place, and manner of communication will be established by the Panel.

(D) The Panel may, at its discretion, interview the youth or any other individual who may have information relevant to the youth's rehabilitation needs.

(E) To be considered as a factor in a determination to extend a youth's stay, a violation of the rules of conduct must have been previously proven in a due process hearing. Evidence of factors other than rule violations may be considered by the Panel irrespective of its form.

(3) Deadline for Release or Discharge. If the Panel determines that a youth's length of stay should not be extended, TYC must release or discharge the youth within 15 calendar days after the date of the Panel decision.

(e) Completion of Minimum Length of Stay.

(1) Referral by the Progress Review Team. At least 30 calendar days prior to the expiration of a youth's minimum length of stay, the Progress Review Team will determine whether or not the youth meets release criteria. If the Progress Review Team determines the youth does not meet release criteria or recommends discharge of the youth, the following actions will occur:

(A) The Progress Review Team will notify the youth, parent/guardian, and any identified victims that the case has been referred to the Panel for review.

(B) On or before the date the minimum length of stay expires, the Progress Review Team will submit to the Panel any information relevant to the decision on whether the youth is in need of additional rehabilitation in a residential placement.

(2) Panel Decision.

(A) The Panel will make a determination as to whether TYC will discharge the youth, release the youth, or extend the youth's stay in a residential placement.

(B) The Panel may extend the youth's stay only if the Panel determines by majority vote and on the basis of clear and convincing evidence that:

(i) the youth is in need of additional rehabilitation from TYC; and

(ii) a residential placement will provide the most suitable environment for that rehabilitation.

(C) The Panel's determination may include assessments of factors including, but not limited to, the following:

(i) the youth's efforts to reduce individual risk factors and increase individual protective factors;

(ii) length of time in a residential program relative to the youth's conduct;

(iii) degree and quality of the youth's participation in available treatment programs;

(iv) behavior during the youth's length of stay as evidenced by the number and frequency of rule violations confirmed through a due process hearing, with special consideration given to:

(I) serious rule violations, aggressive incidents, or criminal conduct;

(II) incidents that demonstrate a clear continuation of the youth's offense cycle as evidenced by conduct similar to the youth's commitment offense(s).

(D) If the Panel extends the length of a youth's stay, the Panel must:

(i) specify the additional period of time that the youth must remain in residential placements; and

(ii) provide a written report explaining the reason for the extension to the youth, parent/guardian, and any designated advocate. The report must be provided within 10 business days after the date of the Panel decision.

(f) Completion of Extension Length of Stay.

(1) Notification. At least seven calendar days prior to the expiration of an extension length of stay, the Panel will notify the youth, the youth's parents/guardian, and victim(s) that the youth's case is pending review before the Panel.

(2) Panel Decision. The Panel will conduct a review and make a determination to discharge the youth, release the youth, or extend the length of stay in a residential placement. The Panel must notify all parties of the decision within 10 business days from the date of the decision.

(g) Request for Reconsideration of an Extension Order.

(1) The youth, the youth's parent/guardian, the youth's designated advocate, the youth's victim(s), a TYC employee, an employee of a TYC contractor, or a person who provides volunteer services at a TYC facility may submit a request for reconsideration of an extension order.

(2) The request for reconsideration must be in writing and received by the Panel within 15 calendar days after the date of the written notice explaining the reason for the extension.

(3) The youth may request assistance from any TYC staff member, volunteer or advocate in completing a request for reconsideration.

(4) The person submitting the request for reconsideration must state in the request the reason for the request.

(5) Upon receipt of a request for reconsideration of an extension order, the Panel must reconsider an extension order that:

(A) extends the youth's stay in TYC custody by six months or more; or

(B) combined with previous extension orders, will result in an extension of the youth's stay in TYC custody by six months or more.

(6) For reconsideration requests accepted by the Panel, the Panel will provide a written reply to all parties with an explanation of the Panel's decision. The reply will include an indication that the Panel has considered the information submitted in the request.

(h) Request for Reconsideration of a Release or Discharge Order. The facility administrator or appropriate contract care monitoring staff may request reconsideration of a release or discharge order at any time prior to the youth's release or discharge if new information becomes available or the youth is alleged to have committed a major rule violation of which the panel was unaware at the time of its original 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.

Filed with the Office of the Secretary of State on December 1, 2008.

TRD-200806223

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Earliest possible date of adoption: January 11, 2009

For further information, please call: (512) 424-6014



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 809. CHILD CARE SERVICES**

##### **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

###### **40 TAC §809.41**

The Texas Workforce Commission (Commission) proposes to amend the following section of Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as amended, requires that providers of federal public benefits verify the citizenship or immigration status of all beneficiaries of public assistance. The Child Care and Development Fund (CCDF) is among the U.S.

Health and Human Services programs that are subject to the verification provisions of PRWORA. On November 25, 1998, the Administration for Children and Families (ACF) issued Program Instruction ACYF-PI-CC-98-08 to clarify that the child is the primary beneficiary of the CCDF program and as such *only the child's* citizenship or immigration status is subject to verification.

PRWORA §432(d), as amended, exempts nonprofit charitable organizations that provide federal, state, or local public benefits from determining, verifying, or otherwise requiring proof of citizenship or immigration status from any applicant for such benefits. In Program Instruction ACYF-PI-CC-98-08, ACF affirmed that this exemption is applicable when nonprofit charitable organizations determine eligibility for CCDF, but *not* applicable when governmental entities or nonprofits that are not charitable organizations determine eligibility. Additionally, the CCDF Lead Agency cannot require nonprofit charitable organizations determining eligibility for the CCDF program to verify citizenship and immigration status.

Texas Labor Code §302.023 requires that the administration of workforce development programs be delegated to the Local Workforce Development Boards (Boards) and Texas Government Code §2308.264(a) prohibits Boards from directly determining eligibility for services. As a result, child care eligibility is determined by entities that contract with Boards--a majority of which are nonprofit charitable organizations. ACF guidance in ACYF-PI-CC-98-08 did not specify whether the CCDF Lead Agency contracting with nonprofit charitable organizations--which are exempt from verifying a child's citizenship or immigration status--retains the responsibility for ensuring that such verification is conducted.

On May 2, 2008, ACF issued Program Instruction CCDF-ACF-PI-2008-01 to clarify its previous guidance and respond to inquiries from a number of states regarding verification of citizenship or immigration status of CCDF applicants. The Program Instruction states that while nonprofit charitable organizations are exempt from the verification requirements mandated by Title IV of PRWORA, the CCDF Lead Agency is not exempt from its responsibility to ensure that only eligible individuals receive services. Therefore, when contracting directly or indirectly with a nonprofit charitable organization that elects not to verify the citizenship or immigration status of applicants for CCDF services, the Texas Workforce Commission, as the CCDF Lead Agency, remains responsible for ensuring that a child's citizenship and immigration status is verified.

As a result of this clarification, the Commission proposes to amend Chapter 809, Child Care Services rules, to ensure that a child's citizenship or legal immigrant status is verified as part of the basic eligibility determination for CCDF services.

#### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

##### **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

The Commission proposes the following amendment:

809.41. A Child's General Eligibility for Child Care Services

New §809.41(a)(2) is added to require that Boards must ensure that a child's citizenship or legal status is verified as a component of eligibility for child care services.

This change reflects guidance from ACF that a child's citizenship or immigration status must be verified to comply with PRWORA requirements.



Pursuant to §809.42(a), prior to authorizing child care a Board must ensure that its child care contractor verifies eligibility for child care services, which includes a child's citizenship or immigration status. Program Instruction CCDF-ACF-PI-2008-01 states that Lead Agencies have flexibility to establish procedures for verifying an applicant's citizenship or immigration status. However, the procedures must be in accordance with U.S. Department of Justice (DOJ) requirements set forth in the November 17, 1997, DOJ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA found at <http://www.dhhs.gov/ocr/nationalorigin/interimguidance.pdf>. The Commission will issue guidance to the Boards on methods for verifying a child's citizenship or immigration status that comply with the DOJ guidance.

Also, because some child care contractors are nonprofit charitable organizations and exempt from verifying citizenship or immigration status under PRWORA §432(d), the Commission will also issue guidance to Boards that maintains this exemption but ensures that the verifications are performed.

Certain paragraphs in §809.41 have been renumbered to accommodate additions or deletions.

### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state government as a result of enforcing or administering the rules. There may be additional costs to Local Workforce Development Boards (local governments), but these costs are not expected to be significant.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

#### Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers.

The reasoning that led to these conclusions for the following changes is as follows:

Program Instruction CCDF-ACF-PI-2008-01--"Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees"--states that:

"Section 432(d) of PRWORA, as amended, provides that, 'a non-profit charitable organization, in providing any Federal public benefit...or any State or local public benefit...is not required un-

der this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.' (8 USC 1642(d)). A Lead Agency may not require non-profit organizations determining eligibility in the CCDF program to verify citizenship and immigration status. In ACYF-PI-CC-98-08, the Child Care Bureau stated that the exemption at section 432(d) of PRWORA does not apply where eligibility for services is determined by a governmental entity, but does apply if eligibility for CCDF services is determined by a non-profit charitable organization. The guidance did not clarify whether a CCDF Lead Agency would retain responsibility for verifying an applicant's legal status in circumstances where the Lead Agency has selected a non-profit charitable organization to determine eligibility for CCDF services on the Lead Agency's behalf, and the non-profit organization elects not to verify citizenship and immigration status."

"This Program Instruction clarifies that, while non-profit organizations are exempt from verification requirements mandated by title IV of PRWORA, this exemption does not release the Lead Agency from its responsibilities to assure that only individuals 'eligible' for services receive them. If a non-profit organization contracted by the Lead Agency elects not to verify the citizenship and immigration status of applicants for CCDF benefits, the Lead Agency retains this responsibility and therefore must establish procedures for verification. A Lead Agency may want to consider this fact when entering into an agreement with the non-profit charitable organization. A Lead Agency could choose to enter into contracts only with non-profit organizations that are willing to verify citizenship and immigration status when determining eligibility for CCDF services."

Child care eligibility for CCDF programs is determined in Texas by entities contracting with workforce Boards, a majority of which are "non-profit charitable organizations." Former ACF guidance in ACYF-PI-CC-98-08 did not specify whether the CCDF Lead Agency contracting with nonprofit charitable organizations (which are not required to verify the child's citizenship or immigration status) retains the responsibility for ensuring that such verification is conducted. This latest guidance, however, clarifies that the state's CCDF Lead Agency is responsible for ensuring that only individuals who are eligible for CCDF services receive them, and TWC is clarifying in these rules that workforce Boards are responsible for assuring that only eligible individuals are served in CCDF programs in their workforce area, including the verification of a child's citizenship and immigration status when "non-profit charitable organizations" have elected not to verify such information.

Program Instruction CCDF-ACF-PI-2008-01 states that Lead Agencies have flexibility to establish procedures for verifying an applicant's citizenship or immigration status. However, the procedures must be in accordance with U.S. Department of Justice (DOJ) requirements set forth in the November 17, 1997, DOJ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA. Program staff has reviewed the DOJ guidance and documentation that verifies citizenship or immigration status and point out that review of the documentation indicates that a majority of the documentation used to verify citizenship--such as birth certificates, baptismal records, hospital or public health birth records, or public assistance or social service records--may also be used to verify the child's age. Verification of the child's age is currently a requirement under §809.41(a)(1). Program staff concludes, therefore, that because verifying citizenship can be accomplished during the current process for verifying the child's age, this new requirement is not expected to add additional

costs on workforce Board child care contractors. Furthermore, the DOJ documentation requirement to verify a non-citizen's legal immigration status is very specific and typically the legal immigrant family has ready access to such documentation. Program staff does not expect that requesting this additional documentation will place any additional costs on the workforce Board's child care contractor.

The actual costs of verification of a child's citizenship and immigration status may vary, depending upon the circumstances. In cases where such verification may not be done currently (i.e., if a nonprofit charitable organization has elected not to verify such information) and the pertinent workforce Board must now make procurement changes to assure that such verification is completed, then it may be logical to expect that additional costs will be incurred. However, there is no obvious basis to estimate the amount of such a cost increase, (a) particularly when such verification can occur using the same documentation currently used to verify the child's age; (b) irrespective of whether virtually all or some lesser proportion of citizenship and immigration status for children in subsidized child care is currently verified, and with no obvious pattern of association, there is a significant variance among workforce Boards in the cost per subsidized child care unit for "administration" and "operations" and in combined "administration" and "operations" as a proportion of child care allocations (eligibility determination being a subset of "administration" and "operations"); and (c) there is no readily available information from ACF or state sources on the actual or a target cost for eligibility verification or child citizenship and immigration status verification. Additionally, however, it is well to note that such costs are likely to be not significant, as child citizenship and immigration status verification for child care is a one-time procedure per child (i.e., as compared to parental working status and income level, which may be verified as much as four times per year), and may alternatively be satisfied through the required verification process associated with some other program, such as qualification for Temporary Assistance for Needy Families or food stamps, prior to qualification for subsidized child care.

These rules would not have adverse economic effects on small businesses or microbusinesses because small businesses or microbusinesses are not regulated or otherwise affected by the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure that public child care funds are spent in accordance with federal laws, regulations, and guidelines.

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

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on August 5, 2008. The Commission also conducted a conference call with Board executive directors and Board staff on August 8, 2008, to discuss the concept paper. During the

rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The amended rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed amendment will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

#### §809.41. A Child's General Eligibility for Child Care Services.

(a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, a Board shall ensure that the child ~~shall~~:

(1) ~~meets~~ ~~[meet]~~ one of the following age requirements:

(A) be under 13 years of age; or

(B) at the option of the Board, be a child with disabilities under 19 years of age; ~~and~~

(2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and

(3) ~~[(2)]~~ ~~resides~~ ~~[reside]~~ with:

(A) a family whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; and

(B) parents who require child care in order to work or attend a job training or educational program.

(b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.

(c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

(d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:

(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.

(2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection,

child care services during job search activities are limited to four weeks within a federal fiscal year.

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

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

TRD-200806219

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Earliest possible date of adoption: January 11, 2009

For further information, please call: (512) 475-0829



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 100. CHARTERS

##### SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

###### 19 TAC §100.1, §100.101

The State Board of Education (SBOE) adopts amendments to §100.1 and §100.101, concerning open-enrollment charter schools. The amendments to §100.101 are adopted with a change to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4590). Section 100.1 is adopted without changes and will not be republished. Section 100.1 specifies provisions relating to application and selection procedures and criteria. Section 100.101 governs the procedure for collecting information for the annual report on open-enrollment charter school governance. The adopted amendments reflect a statutory correction and modify the annual governance reporting requirements.

The amendment to 19 TAC §100.1, Application and Selection Procedures and Criteria, is adopted in subsection (k) to update a statutory reference. The amendment adopted to 19 TAC §100.101, Annual Report on Open-Enrollment Charter Governance, modifies the annual governance reporting requirements for collecting identifying information about family members serving together on boards or as administrators. The amendment to 19 TAC §100.101 does not require an additional report, only the inclusion of one new criterion on the existing governance reporting form. A technical correction was made at adoption to delete the word "and" at the end of subsection (a)(2).

The Texas Education Agency determined that the amendments will have no direct adverse economic effect for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed amendments.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2009-2010 school year in order to implement the latest policy in a timely manner. The effective date of the adopted amendments is 20 days after filing as adopted.

The amendments are adopted under the Texas Education Code, §§7.102(c)(9), 12.101, 12.110, 12.111, and 12.119, which authorizes the State Board of Education to: adopt an application form

and a procedure that must be used to apply for a charter for an open-enrollment charter school and criteria to use in selecting a program for which to grant a charter; grant a charter on the application of an eligible entity for an open-enrollment charter school; and establish the procedure for collecting information for the annual report on open-enrollment charter school governance, including the specification and description of certain powers and duties.

The amendments implement the Texas Education Code, §§7.102(c)(9), 12.101, 12.110, 12.111, and 12.119.

*§100.101. Annual Report on Open-Enrollment Charter Governance.*

(a) No later than November 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents), the following information on a charter school governance reporting form approved by the State Board of Education:

(1) identifying information for and compensation of each officer and member of the governing body of the open-enrollment charter holder;

(2) identifying information for and compensation of each officer of the charter school;

(3) identifying information for and compensation of each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school; and

(4) identifying information about family members serving together on boards or as administrators.

(b) The identifying information required for an individual under subsection (a) of this section may include facsimile numbers and electronic mail addresses and shall include:

(1) the title of each position held or function performed by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, as described by the powers and duties listed in the charter;

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a mailing address for the individual, if an officer; and the street address of the individual's primary residence, if a governing body member; and

(6) telephone numbers for the individual.

(c) The compensation information required for an individual under subsection (a) of this section shall include all compensation, remuneration, and benefits received by the individual in any capacity from the charter holder or the charter school, or from any contractor or

management company doing business with the charter holder or charter school. The compensation reported shall include without limitation:

- (1) all salary, bonuses, benefits, or other compensation received pursuant to an employment relationship;
- (2) all compensation received for goods or services under contract, agreement, informal arrangement, or otherwise;
- (3) all payment of or reimbursement for personal expenses;
- (4) all credit extended to the individual by the charter holder or charter school;
- (5) the fair market value of all personal use of property paid for by the charter holder or charter school;
- (6) the fair market value of all in-kind transfers of property;
- (7) all compensation for goods or services provided to the charter holder through transactions unrelated to the charter school; and
- (8) all other forms of compensation or remuneration received by the individual from the charter holder or charter school.

(d) No later than November 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents):

- (1) a copy of its articles of incorporation and bylaws, or comparable documents if the charter holder does not have articles of incorporation or bylaws; or
- (2) if a copy of its articles of incorporation and bylaws or comparable documents is already on file under this subsection, a copy of any amendments or changes thereto.

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 December 1, 2008.

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## CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

### 19 TAC §103.1201

The Texas Education Agency (TEA) adopts new §103.1201, concerning standards for operation of school district disciplinary alternative education programs (DAEPs). The new section is adopted with changes from the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5833). The new rule adopts minimum standards for the program in accordance with the Texas Education Code (TEC), §37.008.

House Bill (HB) 426, 80th Texas Legislature, 2007, amended the TEC, §37.008, adding requirements for school districts with DAEPs to employ only teachers who meet all certification re-

quirements established under the TEC, Chapter 21, Subchapter B, and to provide not less than the minimum amount of instructional time per day required by the TEC, §25.082(a). HB 426 also added to the TEC, §37.008, the requirement that the TEA adopt specific minimum standards for the operation of a DAEP to ensure a quality education for students enrolled in such programs.

Adopted new 19 TAC §103.1201 implements the TEC, §37.008, by establishing in rule minimum standards for the operation of DAEPs. As directed by statute, the adopted new rule includes provisions relating to student-to-teacher ratios; student health and safety; reporting of abuse, neglect, or exploitation of students; training for teachers in behavior management and safety procedures; and planning for a student's transition from a DAEP to a regular campus.

DAEP standards must be addressed in the district improvement plan.

In response to the public comments on proposed new 19 TAC §103.1201, Standards for the Operation of School District Disciplinary Alternative Education Program, and to incorporate necessary technical edits, the following changes were made.

Subsection (a), relating to the definition of a DAEP, was modified to delete "school district" from reference to local policy as a technical edit to simplify language when referring to local policy. A technical edit was also made to clarify reference to students' educational programs.

Subsection (b), relating to district improvement plans, was modified to clarify that this responsibility is placed directly on the district rather than the DAEP.

Subsection (d), relating to third-party participation, was modified to clarify that the district is ultimately accountable for the deliverables of the third-party contract. Paragraphs (1) and (2) were deleted and integrated into the following statement, "The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider."

Subsection (f), relating to academic instruction, was modified to clarify that this responsibility is placed directly on the district rather than the DAEP. A technical edit was made in paragraph (3) to add reference to the TEC, §37.008(a)(3), which requires that students in a DAEP must be separated from the students who are not assigned to the DAEP. A technical edit was also made in paragraph (3) to simplify language when referring to local policy.

Subsection (g), relating to services for students with disabilities, was modified to add reference to the TEC, §37.004, for clarity. A technical edit was also made to correct the term individualized education program (IEP).

Subsection (h), relating to safety and supervision of students, was modified to clarify that this responsibility is placed directly on the district rather than the DAEP. Additionally, in subsection (h), language pertaining to immunity from liability was added to clarify that the TEC, §22.0511, takes precedence. Paragraph (1) was modified as a technical edit to simplify language when referring to local policy. Paragraph (4) was modified for clarification regarding the board-approved discipline policy, thus clarifying that the policy is adopted by the board, not the DAEP.

Subsection (j), relating to procedures for newly-entering students, was modified to remove the term "Admission" since there are no admission requirements for a DAEP.

Subsection (k), relating to procedures for exiting students, was modified in paragraph (1) by removing language about collaborative groups in order to clarify the requirement for an established timeline for the student's transition between the DAEP and the locally assigned campus. Paragraph (2) was modified to clarify that communication should come from the DAEP staff to the locally assigned campus and to require that specific information be provided regarding the student's educational performance and tasks completed in the DAEP.

The TEA determined that the new section will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began July 25, 2008, and ended August 25, 2008. Following is a summary of the public comments received and corresponding agency responses.

#### §103.1201(b)

**Comment.** Texas Appleseed and Advocacy, Incorporated commented that one of the key provisions of the proposed new rule, specified in subsection (b)(1) - (6), requires DAEPs, rather than the school district, to "ensure" that objectives related to the DAEP are included in the district's improvement plan. The commenters recommended that language be changed to require the school district, rather than the DAEP, to be responsible for ensuring that the board-approved district improvement plan includes improvement objectives for DAEPs.

**Agency Response.** The agency agrees. Language was modified throughout the rule to clarify the responsibilities of school districts.

**Comment.** Texas Appleseed and Advocacy, Incorporated commented that the original draft of the proposed rule listed five additional areas to be discussed in the improvement plan objectives: performance gains, mandatory and discretionary placements, number of students placed in the JJAEP after the DAEP, average length of stay, and academic progress. The commenters requested that these areas be added back to the rule for adoption.

**Agency Response.** The agency disagrees. The agency determined that the listed additional areas were to remain under local policy.

**Comment.** Texas Appleseed and Advocacy, Incorporated commented that the proposed rule does not include provisions relating to assessments of DAEP students' academic growth. The commenters stated that the assessment requirement is appropriate to determine whether students' educational needs are being met in a DAEP.

**Agency Response.** The agency agrees. In response to House Bill (HB) 2532, the agency is currently in the process of preparing rule text pertaining to assessing academic growth of the DAEP student required under the TEC, §37.0082.

#### §103.1201(d)

**Comment.** The Texas Council for Developmental Disabilities (TCDD), in collaboration with the Center on Disability and Development at Texas A&M University, commented that proposed new subsection (d)(1) references "performance measures" that must be included in a third-party contract for DAEP services. The TCDD stated that these performance measures would address, principally, the operations of the DAEP, and as such, should have

to follow a specific set of standards that are not delineated in the proposed new rule. In addition to proposed requirements regarding teacher-to-student ratio and length of the school day, third-party contractors must adhere to performance measures that ensure that students with disabilities receive the educational support they need to make progress on their federally required IEP.

**Agency Response.** The agency disagrees. It is the district's responsibility to comply with any contracts. However, language in subsection (d) was modified at adoption to clarify that the district is ultimately accountable for the deliverables of the third-party contract.

#### §103.1201(f)

**Comment.** The TCDD commented that proposed new subsection (f) states that each DAEP must provide an academic and "self-discipline" program that leads to graduation and includes instruction in each student's special education services. The TCDD recommended clarifying what a "self-discipline" program is, as it relates to students with disabilities.

**Agency Response.** The agency disagrees. The self-discipline program should be established by each school district to meet the needs of the student.

**Comment.** Jarrell Independent School District (ISD) commented that the DAEP school day minimum of seven hours a day specified in subsection (f)(2) is problematic to small districts that enter into cooperatives to provide DAEP services with surrounding districts. Jarrell ISD stated that this extends the day for the students and the bus drivers by an hour and a half in the morning and another hour and a half in the afternoon. Jarrell ISD noted that the district's DAEP students currently attend the DAEP for 6.5 to 6.75 hours a day, not including the bus ride. Jarrell ISD also commented that the seven-hour minimum school day would have a financial impact on a district that has to pay more overtime to bus drivers because the bus route to the DAEP requires them to work more than 40 hours a week. Jarrell ISD requested that this provision be omitted and that districts be allowed the flexibility to set the day according to local circumstances.

**Agency Response.** The agency disagrees. Based on the compilation of feedback provided by 347 school districts and 45 organizations, 92% of DAEPs report having school days that are seven hours or longer. This will ensure sufficient time to provide the required educational services.

**Comment.** The Texas Classroom Teachers Association (TCTA) and Katy ISD expressed concern with proposed new subsection (f), which states that the student's four-year graduation plan (minimum, recommended, or distinguished achievement--advanced) may not be altered, while also stating that the student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year. Katy ISD commented that this would include offering correspondence or distance learning opportunities or summer school at no charge and inquired whether this means the student must be offered the same exact course or if a foundation course can be interpreted as a basic course. Katy ISD noted that it is a challenge to offer the basic courses at all the different levels. The TCTA asked for clarification of whether all curriculum (including extracurricular studies) must be provided in a DAEP setting. The TCTA noted that requiring all curriculum could cause an undue hardship but ensuring the foundation curriculum would not do so.

Agency Response. The agency disagrees. The agency has determined that subsection (f)(1) is clear. Subsection (f) imposes two requirements. First, a student's overall graduation plan may not be altered because of a removal, ensuring that the student is not placed on a less demanding graduation plan. Second, a student must be offered an opportunity free of charge to complete specific foundation curriculum courses in which the student is enrolled at the time of removal. This allows a student to remain on track to complete foundation curriculum courses on the same schedule despite having been removed. A DAEP may offer a student a different enrichment curriculum course, but must provide an opportunity to complete the same course in the foundation curriculum as the student was enrolled in at the time of removal.

#### §103.1201(g)

Comment. The TCDD commented that subsection (g) requires DAEPs to provide services to a student with a disability in accordance with the IEP established by the ARD committee. The TCDD encouraged the TEA to monitor compliance with this standard through objectively measured criteria and stated that this section may need to clarify that the DAEP must follow the IEP currently in place at the time of the student's removal to the DAEP. The TCDD stated that any change in placement should not result in significant changes in a student's IEP unless other educational deficits and/or support needs are identified separate from the placement change. The TCDD recommended that the DAEP standards should clarify that if a child's IEP is changed after referral to the DAEP, it is not done simply to accommodate the change in placement and make it easier for the DAEP to serve that student. The TCDD noted that if, for example, a student is referred to a DAEP and needs an ASL interpreter as part of the IEP accommodations, the need for an interpreter cannot be removed simply because the student will be receiving services in a DAEP. The TCDD also commented that subsection (g) should specifically mention that a DAEP must follow and implement the student's behavior intervention plan (BIP). The TCDD stated that if the ARD committee determines that revisions are needed to the IEP (including the BIP), those changes must be addressed as a revision to the IEP before the change in placement or within an established timeframe by the TEA.

Agency Response. The agency disagrees with the need to specifically address the IEP and BIP in rule. The language in the rule requires consideration of the IEP and does not supersede federal and state laws and regulations. However, the agency has added reference to the TEC, §37.004, and federal requirements for clarity.

Comment. Texas Appleseed and Advocacy, Incorporated noted the provision in subsection (g) requiring DAEPs to provide educational services that will support the student in meeting the goals identified in the student's IEP. The commenters stated that this provision falls short of IDEA's requirements, which include access to the general curriculum, a functional behavioral assessment, behavioral intervention services, and modifications designed to address the behavior that caused the referral.

Agency Response. The agency disagrees. Access to general curriculum is addressed in rule. The IDEA would independently require that the district provide the services specified in the IEP if appropriate or that the district's ARD committee meet to determine appropriate modifications.

#### §103.1201(h)

Comment. The TCTA commented that the requirement in subsection (h) regarding DAEP responsibility for the safety and supervision of students assigned to the program is not found elsewhere in the Texas Administrative Code and questioned potential ramifications to immunity provided in statute.

Agency Response. The agency agrees. Language in subsection (h) was modified to reflect the specification that immunity provided in the TEC, §22.0511, is not affected.

Comment. The Texas Association of School Boards (TASB) and Katy ISD expressed concern that the DAEP student-to-teacher ratio proposed in subsection (h)(1) imposes a student-to-teacher ratio for DAEPs that is significantly lower than the 22:1 ratio for Kindergarten-Grade 4 at traditional campuses mandated by state law. The TASB commented that the proposed student-to-teacher ratio and the requirement to educate students separately from students on the regular campus would result in hiring additional certified teachers, securing additional facilities, and purchasing additional supplies. The TASB and Katy ISD also expressed concerns about problems associated with hiring additional staff at various times throughout the year because of constantly fluctuating student enrollments. The TASB requested that the proposed rule either adopt the same class size ratio for DAEPs as for traditional campuses or allow a waiver of the teacher-to-student ratio for districts diligently working to comply with the new DAEP class size requirement.

Agency Response. The agency disagrees. The teacher-to-student ratio should remain at 1:15 based on research that supports a smaller ratio in order to provide sufficient education services in a DAEP site. Based on the compilation of feedback provided by 347 school districts and 45 organizations, 73% of DAEP programs currently maintain a teacher-to-student ratio of 1:15 or less.

Comment. The TCTA requested the addition of language in subsection (h)(2), relating to staff being prepared and trained to respond to health issues and emergencies, to make clear that it is incumbent upon the school district to provide staff with opportunities to participate in training.

Agency Response. The agency disagrees. Language in subsection (h) states that the district is responsible, as also specified in subsection (i).

Comment. The TCDD commented that subsection (h) describes steps a DAEP must take to ensure safety and adequate supervision of students in its programs. The TCDD stated that missing from this subsection is a requirement to follow discipline and behavior management techniques appropriate to the student's disability. The TCDD recommended amending the language in paragraph (4) to reflect that discipline and intervention measures established in school district board policies incorporate the needs of students with disabilities and, specifically, require adherence to a student's BIP as the primary discipline intervention for those students.

Agency Response. The agency disagrees. The agency has determined that it is unnecessary to add the language recommended by the commenter to this subsection because local school districts and shared services arrangements already have policies and procedures in place to implement the sections of the TEC, Chapter 37, and federal requirements pertaining to the disciplining of students with disabilities.

Comment. The TASB requested that proposed language in subsection (h)(4) requiring a DAEP to establish a board-approved

policy be replaced with language specifying that the DAEP shall implement the board-approved discipline and intervention measures contained in the student code of conduct, consistent with TEC, §37.001.

Agency Response. The agency agrees. Language in subsection (h)(4) was modified to clarify that DAEPs are to implement policies adopted by local school boards.

#### §103.1201(i)

Comment. The TCTA requested the addition of language in subsection (i), relating to training programs on education, behavior management, and safety procedures, to make clear that it is incumbent upon the school district to provide staff with opportunities to participate in training.

Agency Response. The agency disagrees. Language in the rule allows districts to determine appropriate training based on individual district needs.

Comment. The TCDD commented that subsection (i) regarding required training does not specify how much training must be provided to DAEP staff and how often training must be provided. The TCDD recommended amending this section to add language that specifies how often each DAEP staff member must receive training, what level of training must be provided, and who is qualified to provide that training. The TCDD also recommended clarifying expectations regarding the quality, quantity, and scope of the training to be received by DAEP staff.

Agency Response. The agency disagrees. The language in the rule allows districts to determine appropriate training, while considering the individual circumstances of the district's DAEP program.

Comment. The TCDD commented that subsection (i)(1), regarding training on the education and discipline of students with disabilities, does not specify training to implement the IEP and BIP for each student. The TCDD stated that training on effective strategies to serve children with different types of disabilities is critical for a student's successful progress and also stated that this training should address the different types of disabilities and accommodations needed (such as services for students with autism spectrum disorders). The TCDD suggested that training on how to implement the IEP and BIP for each individual student should be required for DAEP staff.

Agency Response. The agency disagrees. In conjunction with the review of the IEP, the rule ensures that students will be individually treated through the consideration of their IEP.

#### §103.1201(j)

Comment. The TCTA commented that the term "admission procedures" in subsection (j) is not clear and may imply that a student can be admitted or denied admission based on this language, while the TEC, Chapter 37, requires such removal.

Agency Response. The agency agrees. Language in subsection (j) was modified to reflect the deletion of the term "Admission."

#### §103.1201(k)

Comment. The TCTA suggested clarification on the term "collaborative groups" in subsection (k)(1), noting uncertainty of what the term means and who would be required to participate.

Agency Response. The agency agrees. Language in subsection (k)(1) was modified to require regular communication between

the DAEP and local campus with specific information requirements.

Comment. Texas Appleseed and Advocacy, Incorporated commented that the proposed new rule only requires transition procedures to include a timeline for the student's transition and written and oral communication of the student's education and behavioral progress. The commenters considered this to be ambiguous and difficult to classify as a programmatic standard in any meaningful sense and recommended several standards to include in transition planning.

Agency Response. The agency disagrees. Transition procedures are already in place in federal and state law and, therefore, not restated in rule. However, language was modified in subsection (k)(2) to require written reports from the DAEP staff that include the student's educational performance and tasks completed.

#### General Comments

Comment. Katy ISD commented that the proposal was streamlined from an earlier version and that it appears that feedback from district personnel has resulted in positive changes. Katy ISD expressed appreciation for changes relating to the review of attendance percentages, transportation of DAEP students, staff training in behavior management and safety procedures, and district designation of grade levels considered elementary or secondary.

Agency Response. The agency agrees.

Comment. Texas Appleseed and Advocacy, Incorporated commented on the placement of the proposed rule in the Health and Safety section of Title 19 of the Texas Administrative Code, rather than the Planning and Accountability section. The commenters stated that placing the rule that defines standards for DAEPs in a section that has nothing to do with programmatic standards, planning, or accountability undermines the importance of and need for minimum standards for DAEPs. The commenters noted that it was the legislature's recognition of the problems caused by the lack of standards that motivated passage of HB 426.

Agency Response. The agency disagrees. The new rule is appropriately placed in 19 TAC Chapter 103, Health and Safety, where rules concerning student safety are located.

Comment. Texas Appleseed and Advocacy, Incorporated commented that the proposed new rule fails to elucidate standards beyond those enumerated in the statute itself, despite the legislature's clear intent that the TEA adopt minimum standards that include, but expand on, the list in HB 426.

Agency Response. The agency disagrees. The new rule provides additional requirements and standards throughout that are consistent with the statute.

Comment. Texas Appleseed and Advocacy, Incorporated commented that the TEA does not include any language indicating how the standards will be monitored or enforced. The commenters also stated that the TEA should put procedures into place that ensure that DAEPs are complying with existing federal and statutory requirements and should not articulate a "standard" that falls short of existing statute.

Agency Response. The agency disagrees. The statute does not provide for monitoring and enforcement. Instead, the TEC, §37.008(a-2), requires the agency to deliver a report to the legislature that provides the estimated costs to the agency of enforce-



ing the DAEP standards, including the estimated cost of on-site monitoring to enforce the standards and alternative methods of monitoring compliance with the standards.

Comment. The TCDD, in collaboration with the Center on Disability and Development at Texas A&M University, commented that missing from the proposed standards is a requirement for the local campus to monitor the student's progress on meeting proposed goals. The TCDD stated that the proposal does not require DAEPs to address strategies to mitigate the behavior of students with disabilities and that discretionary placements, based on the behavior of the student, are the majority of the referrals to DAEP services. The TCDD recommended that the proposal incorporate language that requires DAEPs to closely monitor the implementation of appropriate BIP for each student with a disability. The TCDD commented that the proposal does not address how adherence to these standards will be monitored, that the standards will be ineffective if they are not monitored for compliance, and that schools must be given meaningful incentives to remain in compliance with the rule.

Agency Response. The agency disagrees. Language in the rule requires consideration of the IEP and does not supersede federal and state laws and regulations. The TEC, §37.004, addresses the needs of the placement of students with disabilities.

The new section is adopted under the Texas Education Code, §37.008, as amended by House Bill 426, 80th Texas Legislature, 2007, which authorizes the agency to adopt minimum standards for the operation of disciplinary alternative education programs.

The new section implements the Texas Education Code, §37.008.

*§103.1201. Standards for the Operation of School District Disciplinary Alternative Education Programs.*

(a) A disciplinary alternative education program (DAEP) established in conformance with the Texas Education Code (TEC), §37.008, and this section is defined as an educational and self-discipline alternative instructional program, adopted by local policy, for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP.

(b) Each school district participating in a shared services arrangement (SSA) for DAEP services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus required by the TEC, §11.251 and §11.252, include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

- (1) student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, and with a disability who receive special education and limited English proficiency services;
- (2) attendance rates;
- (3) pre- and post-assessment results;
- (4) dropout rates;
- (5) graduation rates; and
- (6) recidivism rates.

(c) A DAEP may be located on-campus or off-campus in adherence with requirements specified in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). For reporting purposes, the DAEP shall use the county-dis-

trict-campus number of the student's locally assigned campus (the campus the student would be attending if the student was not attending the DAEP).

(d) An individual school district or an SSA may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider.

(e) The campus of accountability for student performance must be the student's locally assigned campus, including when the individual school district or SSA contracts with a third party for DAEP services.

(f) Each school district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services.

(1) A student's four-year graduation plan (minimum, recommended, or distinguished achievement-advanced) may not be altered when the student is assigned to a DAEP. A student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year, including correspondence or distance learning opportunities or summer school. A district may not charge for a course required under this section.

(2) The school day for a DAEP shall be at least seven hours but no more than ten hours in length each day, including intermissions and recesses as required under the TEC, §25.082(a).

(3) Notwithstanding the TEC, §37.008(a)(3), summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.

(g) A DAEP program serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program (IEP) established by a duly-constituted admission, review, and dismissal (ARD) committee, in accordance with the TEC, §37.004, and federal requirements.

(h) Each school district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in the TEC, §22.0511, shall not be impacted.

(1) The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. Elementary grade students assigned to the DAEP shall be separated from secondary grade students assigned to the DAEP. The designation of elementary and secondary will be determined by adopted local policy.

(2) The DAEP staff shall be prepared and trained to respond to health issues and emergencies.

(3) Students in the DAEP shall be separated from students in a juvenile justice alternative education program (JJAEP) and students who are not assigned to the DAEP.

(4) Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.

(i) Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on

positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:

(1) training on the education and discipline of students with disabilities who receive special education services;

(2) instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; and

(3) annual training on established procedures for reporting abuse, neglect, or exploitation of students.

(j) Procedures for each DAEP shall be developed and implemented for newly-entering students and their parents or guardians on the expectations of the DAEP, including written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success.

(k) The transition procedures established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented and updated annually as needed. The transition procedures shall include:

(1) an established timeline for the student's transition from the DAEP to the student's locally assigned campus; and

(2) written and oral communication from the DAEP staff to the locally assigned campus during the student's assignment to the DAEP, including the student's educational performance and tasks completed.

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 November 24, 2008.

TRD-200806211

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

#### **CHAPTER 1. ARCHITECTS**

##### **SUBCHAPTER A. SCOPE; DEFINITIONS**

###### **22 TAC §1.5**

The Texas Board of Architectural Examiners adopts an amendment to §1.5 of Chapter 1, Subchapter A, pertaining to defined terms. The proposal to amend this rule was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5203). The amendment is being adopted without changes. The amendment adds definitions of the terms "cancellation" and "revocation" as those terms are used in the rules regulating the practice of architecture. The amendment clarifies the rules relating to

the termination of an architect's certificate of registration. The amendment draws a distinction between the cancellation and the revocation of a certificate of registration. The definition of the term "cancellation" conforms the rules to Texas Occupations Code §1051.353 which specifies that an expired certificate of registration is cancelled a specified period of time after it has expired. The amendment also revises the definition of the term "reinstatement" to clarify that a cancelled certificate of registration may not be reinstated. The amendment implements Texas Occupations Code Annotated §1051.353 which provides that a certificate cancelled by operation of law cannot be renewed but must be replaced with a new license obtained through the standard licensure process. The amendment clarifies the rules to provide notice that a certificate of registration cancelled by operation of law can not be revived.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.353, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction and specify the procedures for renewal of a certificate of registration.

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

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TRD-200806212

Cathy L. Hendricks

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8544



## **CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER A. SCOPE; DEFINITIONS**

### **22 TAC §3.5**

The Texas Board of Architectural Examiners adopts an amendment to §3.5 of Chapter 3, Subchapter A, pertaining to defined terms. The proposal to amend this rule was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5208). The amendment is being adopted with change. The amendment adds definitions of the terms "cancellation" and "revocation" as those terms are used in the rules regulating the practice of landscape architecture. The amendment clarifies the rules relating to the termination of a landscape architect's license. The amendment also draws a distinction between the cancellation and the revocation of a license. The change eliminates a duplicated phrase in the definition "Table of Equivalents." The definition of the term "cancellation" conforms the rules to Texas Occupations Code §1051.353 which specifies that an expired license is cancelled 2 years after it expires. The amendment will provide greater guidance for those who consult the rules. The amendment also revises the definition of the term "reinstatement" to clarify that a cancelled license may not be rein-

stated. The amendment implements Texas Occupations Code Annotated §1051.353 which provides that a license cancelled by operation of law cannot be renewed but must be replaced with a new license obtained through the standard licensure process. The amendment clarifies the rules to provide notice that a license cancelled by operation of law can not be revived. The amendment also makes technical changes to cross-references to other rules as they appear in the definition of the term "Table of Equivalents for Experience in Landscape Architecture."

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.353, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction and specify the procedures for renewal of a license.

### §3.5. Terms Defined Herein.

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

- (1) The Act--The Landscape Architects' Registration Law.
- (2) Actual Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.
- (3) Administrative Procedure Act (APA)--Texas Government Code §§2001.001 et seq.
- (4) APA--Administrative Procedure Act.
- (5) Applicant--An individual who has submitted an application for registration or reinstatement but has not yet completed the registration or reinstatement process.
- (6) Architectural Barriers Act--Article 9102, Vernon's Texas Civil Statutes and Texas Government Code, Chapter 469.
- (7) Authorship--The state of having personally created something.
- (8) Barrier-Free Design--The design of a facility or the design of an alteration of a facility which complies with the Texas Accessibility Standards, the Americans with Disabilities Act, the Fair Housing Accessibility Guidelines, or similarly accepted standards for accessible design.
- (9) Board--Texas Board of Architectural Examiners.
- (10) Cancel, Cancellation, or Cancelled--The termination of a Texas landscape architectural registration certificate by operation of law two years after it expires without renewal by the certificate-holder.
- (11) Candidate--An Applicant approved by the Board to take the LARE.
- (12) CEPH--Continuing Education Program Hour(s).
- (13) Chair--The member of the Board who serves as the Board's presiding officer.
- (14) CLARB--Council of Landscape Architectural Registration Boards.
- (15) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents issued by a Landscape Architect for the purpose(s) of Regulatory Approval, permitting, or construction.

(16) Consultant--An individual retained by a Landscape Architect who prepares or assists in the preparation of technical design documents issued by the Landscape Architect for use in connection with the Landscape Architect's Construction Documents.

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

(18) Continuing Education Program Hour (CEPH)--At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(19) Council of Landscape Architectural Registration Boards (CLARB)--An international nonprofit organization whose members are landscape architectural licensing boards of the U.S. states and Canadian provinces that license landscape architects.

(20) Delinquent--A registration status signifying that a Landscape Architect

(A) has failed to remit the applicable renewal fee to the Board and

(B) is no longer authorized to practice Landscape Architecture in Texas or use any of the terms restricted by the Landscape Architects' Registration Law.

(21) Direct Supervision--The amount of oversight by an individual overseeing the work of another whereby the supervisor and the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

(22) E-mail Directory--A listing of e-mail addresses

(A) used to advertise landscape architectural services and

(B) posted on the Internet under circumstances where the Landscape Architects included in the list have control over the information included in the list.

(23) Emeritus Landscape Architect (or Landscape Architect Emeritus)--An honorary title that may be used by a Landscape Architect who has retired from the practice of Landscape Architecture in Texas pursuant to §1052.155 of the Texas Occupations Code.

(24) Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(25) Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed landscape architectural project from a technical landscape architectural standpoint.

(26) Good Standing--

(A) a registration status signifying that a Landscape Architect is not delinquent in the payment of any fees owed to the Board or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by a landscape architectural registration board that would provide a ground for the denial of the application for landscape architectural registration in Texas.

(27) Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(28) Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(29) Inactive--A registration status signifying that a Landscape Architect may not practice Landscape Architecture in the State of Texas.

(30) LAAB--Landscape Architectural Accreditation Board.

(31) Landscape Architect--An individual who holds a valid Texas landscape architectural registration certificate granted by the Board.

(32) Landscape Architect Registration Examination (LARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas landscape architectural registration certificate.

(33) Landscape Architects' Registration Law--Article 249c, Vernon's Texas Civil Statutes, and Chapter 1052, Texas Occupations Code.

(34) Landscape Architectural Accreditation Board (LAAB)--An agency that accredits landscape architectural degree programs in the United States.

(35) Landscape Architectural Intern--An individual participating in an internship to complete the experiential requirements for landscape architectural registration in Texas.

(36) Landscape Architecture--The art and science of landscape analysis, landscape planning, and landscape design, including the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(A) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(B) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(C) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(i) the preparation, review, and analysis of master and site plans for landscape use and development;

(ii) the analysis of environmental, physical, and social considerations related to land use;

(iii) the preparation of drawings, construction documents, and specifications; and

(iv) construction observation;

(D) design coordination and review of technical submissions, plans, and construction documents prepared by individuals working under the direction of the Landscape Architect;

(E) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(F) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(G) the analysis and design of:

(i) site landscape grading and drainage;

(ii) systems for landscape erosion and sediment control; and

(iii) pedestrian walkway systems;

(H) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(I) the collaboration of Landscape Architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(J) field observation of landscape site construction, revegetation, and maintenance.

(37) LARE--Landscape Architect Registration Examination.

(38) Licensed--Registered.

(39) Member Board--A landscape architectural registration board that is part of CLARB.

(40) Nonregistrant--An individual who is not a Landscape Architect.

(41) Principal--A Landscape Architect who is responsible, either alone or with other Landscape Architects, for an organization's practice of Landscape Architecture.

(42) Prototypical--From or of a landscape architectural design intentionally created not only to establish the landscape architectural parameters of a project but also to serve as a functional model on which future variations of the basic landscape architectural design would be based for use in additional locations.

(43) Registrant--Landscape Architect.

(44) Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the landscape architectural content of the Construction Documents as a prerequisite to construction of a project.

(45) Reinstatement--The procedure through which a Surrendered or Revoked Texas landscape architectural registration certificate is restored.

(46) Renewal--The procedure through which a Landscape Architect pays a periodic fee so that the Landscape Architect's registration certificate will continue to be effective.

(47) Responsible charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered landscape architects applying the applicable landscape architectural standard of care.

(48) Revocation or Revoked--The termination of a landscape architectural certificate by the Board.

(49) Rules and Regulations of the Board--22 Texas Administrative Code §§3.1 et seq.

(50) Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(51) Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(52) SOAH--State Office of Administrative Hearings.

(53) State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(54) Supervision and Control--The amount of oversight by a landscape architect overseeing the work of another whereby

(A) the landscape architect and the individual performing the work can document frequent and detailed communication with one another and the landscape architect has both control over and detailed professional knowledge of the work; or

(B) the landscape architect is in Responsible Charge of the work and the individual performing the work is employed by the landscape architect or by the landscape architect's employer.

(55) Supplemental Document--A document that modifies or adds to the technical landscape architectural content of an existing Construction Document.

(56) Surrender--The act of relinquishing a Texas landscape architectural registration certificate along with all privileges associated with the certificate.

(57) Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure development during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(58) Table of Equivalents for Experience in Landscape Architecture--22 Texas Administrative Code §3.191 and §3.192 of this Chapter.

(59) TBAE--Texas Board of Architectural Examiners.

(60) TDLR--Texas Department of Licensing and Regulation.

(61) Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(62) Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(63) TGSLC--Texas Guaranteed Student Loan Corporation.

(64) Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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

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TRD-200806213

Cathy Hendricks

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8544



## CHAPTER 5. INTERIOR DESIGNERS SUBCHAPTER A. SCOPE; DEFINITIONS

### 22 TAC §5.5

The Texas Board of Architectural Examiners adopts an amendment to §5.5 of Chapter 5, Subchapter A, pertaining to defined terms. The proposal to amend this rule was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5212). The amendment is being adopted without changes.

The amendment adds definitions of the terms "cancellation" and "revocation" as those terms are used in the rules regulating the practice of interior design. The amendment clarifies the rules relating to the termination of an interior designer's certificate of registration. The amendment also draws a distinction between the cancellation and the revocation of a certificate of registration. The definition of the term "cancellation" conforms the rules to Texas Occupational Code §1051.353 which specifies that an expired license is cancelled 2 years after it expires. The amendment also changes the definition of the term "reinstatement" to clarify that a cancelled certificate of registration may not be reinstated. The amendment implements Texas Occupational Code Annotated §1051.353 which provides that a certificate of registration cancelled by operation of law cannot be renewed but must be replaced with a new certificate obtained through the standard licensure process.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.353, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction and specify the procedures for renewal of a certificate of registration.

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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Cathy L. Hendricks

Executive Director

Texas Board of Architectural Examiners

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# 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 adopts an amendment to §131.7, relating to the Organization of the Board, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8110) and will not be republished.

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 adopted rule change adds the position of Treasurer to the list of officers elected by the Board.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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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 §131.11

The Texas Board of Professional Engineers adopts an amendment to §131.11, relating to Board Member Responsibilities and Duties, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8110) and will not be republished.

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 adopted rule change corrects two citations and aligns the rule language with statutory changes to

§1001.4527 of the Texas Occupations Code regarding informal settlement negotiations.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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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 §131.13

The Texas Board of Professional Engineers adopts an amendment to §131.13, relating to the Vacancies in the Board, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8111) and will not be republished.

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 adopted rule change adds the position of Treasurer to the list of officers elected by the Board.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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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 §131.15

The Texas Board of Professional Engineers adopts an amendment to §131.15, relating to Committees, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8111) and will not be republished.

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 adopted rule change clarifies terminology used for the advisory committees, permits the appointment of Board member liaisons to advisory committees, and establishes a Governmental Advisory Committee.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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Dale Beebe Farrow, P.E.  
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Texas Board of Professional Engineers  
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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 adopts an amendment to §131.35, relating to the Employee Training, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8112) and will not be republished.

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. The adopted rule change clarifies that educational assistance will be calculated for a fiscal year.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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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. FISCAL MATTERS

### 22 TAC §131.61

The Texas Board of Professional Engineers adopts an amendment to §131.61, relating to Financial issues, with changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8113). A minor change was made to §131.61(c) to correct a reference from "Chapter 2161.003" to "§2161.003."

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 adopted rule change clarifies that Historically Underutilized Business Program is administered under the office of the Comptroller.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

§131.61. *Financial.*

(a) The fiscal year of the board shall begin September 1 and close the following August 31. The fiscal year shall be designated to correspond with the calendar year in which it closes.

(b) The operating budget and fees schedule shall be prepared by the executive director and submitted to the board for approval.

(c) Pursuant to the requirements of §2161.003 of the Texas Government Code, the board adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program and stated at Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter B.

(d) The board adopts by reference the rules of the Office of the Attorney General in Texas Administrative Code, Title 1, Part 3, Chapter 68 relating to Negotiation and Mediation of Certain Contract Disputes to comply with the requirements of Texas Government Code, Chapter 2260, §2260.052(c). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of contract's complexity, subject matter, dollar amount, or method and time of performance.

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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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 §131.63

The Texas Board of Professional Engineers adopts an amendment to §131.63, relating to the Self-Directed Semi-Independent Agency Project Act, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8113) and will not be republished.

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 adopted rule change is a correction of capitalization.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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Dale Beebe Farrow, P.E.  
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Texas Board of Professional Engineers  
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For further information, please call: (512) 440-7723



## SUBCHAPTER E. COOPERATIVE AFFILIATIONS

### 22 TAC §131.73

The Texas Board of Professional Engineers adopts an amendment to §131.73, relating to Memoranda of Understanding (MOU), without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8114) and will not be republished.

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 adopted rule change is a clarification of organizations with which the agency may enter an MOU.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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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. ADMINISTRATION

### 22 TAC §131.83

The Texas Board of Professional Engineers adopts an amendment to §131.83, relating to Requests for Information, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8114) and will not be republished.



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 adopted rule change allows the Executive Director to designate a staff member to be the official custodian of Board records.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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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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 §131.85

The Texas Board of Professional Engineers adopts an amendment to §131.85, relating to Board Rules Procedures, with changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8115). A minor change was made to §131.85(a) to correct a reference from "§§2001 and 2002, Government Code" to "Chapters 2001 and 2002, Texas Government Code."

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 adopted rule change corrects a rule citation.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

§131.85. *Board Rules Procedures.*

(a) Amendments, Deletions, and Additions of Rules. Proposed amendments, deletions, or additions to the board rules of practice and procedure may be submitted by the staff or any board member. Board action to accept or amend the proposal shall require a majority vote when a quorum is present at a meeting. A proposal or amended proposal, as accepted by the board, can be promulgated as an amendment, deletion, or addition to board rules by following the procedures set out in Chapters 2001 and 2002, Texas Government Code.

(b) Petition for Adoption of Rules. Any interested person can request the board to adopt, delete, or amend a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following.

(1) Identity information. Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.

(2) Reference. Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified and prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) A suggested effective date. The desired effective date should be stated.

(4) Justification. Justification for the proposed action in narrative form with sufficient particularity to fully inform the board and any interested party of the facts upon which the petitioner relies, including the statutory authority for the promulgation of the proposed rule.

(5) Desired effect of proposal. Include a brief statement detailing the desired effect to be achieved by the proposed rule, change, or amendment or deletion.

(6) Summary. A concise summary of the proposed rule, change, or amendment.

(7) Signatures. Signatures on the petition of the petitioner and/or the attorney or representative of the petitioner.

(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 and by law.

(d) Suspension of Rules. In any case in which a public emergency or imperative public necessity so requires, the board may suspend the operation of these sections to the extent authorized by law.

(e) Invalid Portions and Saving Provisions.

(1) If any subcategory, rule, section, subsection, sentence, clause, or phrase of these rules is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these sections. The board hereby declares that it would have adopted these sections and such subcategories, rules, sections, subsections, sentences, clauses, or phrases thereof irrespective of the fact that any one or more of the subcategories, rules, sections, subsections, sentences, clauses, or phrases be declared invalid.

(2) Since individual board rules are adopted, changed, or deleted periodically, each rule herein will apply only to acts occurring

on or after the effective date of the rule. An act occurring before the effective date of one or more of these rules will be governed by the rules existing before the effective date, which rules are continued in effect for this purpose as if these rules were not in force. Any proceeding pending before the board on the effective date of one or more of these rules is governed by the rules existing before the effective date of these rules, which rules are continued in effect for this purpose as if these rules were not in force.

(3) If there is any conflict between the agency's rules and statutory provisions, and the rules cannot be harmonized with the statute in a timely manner, the statutory provisions shall control. The board shall issue a statement describing the irregularity, expected schedule for correction, and necessary action by an affected party.

(f) Effective Date. The effective date of each rule or subdivision of each rule shall be that date published as the effective date of the rule or subdivision of the rule in the Texas Register as a result of the rule making procedures set out in Chapters 2001 and 2002, Texas Government Code.

(g) Rules Identification and Format. The board reserves the right to revise the format of these rules of practice and procedure to comply with statutory requirements, and such required revision shall not invalidate any portion or change the effective date of the rules of practice and procedure as adopted by the board.

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

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Dale Beebe Farrow, P.E.  
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## SUBCHAPTER G. ADVISORY OPINIONS

### 22 TAC §131.101

The Texas Board of Professional Engineers adopts an amendment to §131.101, relating to Subject of an Advisory Opinion, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8115) and will not be republished.

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 adopted rule change conforms language to Texas Occupations Code §1001.601. This rule adoption is in conjunction with a change to §131.111.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §131.111

The Texas Board of Professional Engineers adopts an amendment to §131.111, relating to Time Period, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8116) and will not be republished.

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 adopted rule change conforms language to Texas Occupations Code §1001.601. This rule adoption is in conjunction with a change to §131.101.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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

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## CHAPTER 133. LICENSING

## SUBCHAPTER A. ENGINEER-IN-TRAINING

### 22 TAC §133.3

The Texas Board of Professional Engineers adopts an amendment to §133.3, relating to Engineer-in-Training Application and Certification, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8116) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.309, EIT certification requirements.

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

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## SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

### 22 TAC §133.11

The Texas Board of Professional Engineers adopts an amendment to §133.11, relating to Types of Licenses, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8117) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; §1001.310 allows for issuance of a Temporary license.

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

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## SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

### 22 TAC §133.21

The Texas Board of Professional Engineers adopts an amendment to §133.21, relating to Application for Standard License, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8118) and will not be republished.

The adopted amendment is related to clarification of rules regarding applications, including clean-up 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.303 generally describes application requirements.

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

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### 22 TAC §133.23

The Texas Board of Professional Engineers adopts an amendment to §133.23, relating to Application from Former Texas License Holders, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8119) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.303 generally describes application requirements.

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

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## 22 TAC §133.25

The Texas Board of Professional Engineers adopts an amendment to §133.25, relating to Application from Engineering Educators, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8120) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.303 generally describes application requirements.

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

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## 22 TAC §133.27

The Texas Board of Professional Engineers adopts 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, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8121) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; §1001.310 allows for issuance of a Temporary license.

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) 440-7723



## SUBCHAPTER D. EDUCATION

### 22 TAC §133.31

The Texas Board of Professional Engineers adopts an amendment to §133.31, relating to Educational Requirements for Applicants, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8122) and will not be republished.

The adopted rule amendment will make rule language more consistent with current practices regarding education credentials. It also codifies a board decision regarding qualifications of grad-

uates of the biological systems engineering program at Texas A&M.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.302 describes license eligibility requirements.

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

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## SUBCHAPTER E. EXPERIENCE

### 22 TAC §133.41

The Texas Board of Professional Engineers adopts an amendment to §133.41, relating to Supplementary Experience Record, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8123) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.303 generally describes application requirements.

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

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## SUBCHAPTER F. REFERENCE DOCUMENTATION

### 22 TAC §133.51

The Texas Board of Professional Engineers adopts an amendment to §133.51, relating to Reference Providers, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8126) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.303 generally describes application requirements.

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

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### 22 TAC §133.53

The Texas Board of Professional Engineers adopts an amendment to §133.53, relating to Reference Statements, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8127) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.303 generally describes application requirements.

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

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## SUBCHAPTER G. EXAMINATIONS

### 22 TAC §133.63

The Texas Board of Professional Engineers adopts an amendment to §133.63, relating to Texas Engineering Professional Conduct and Ethics Examination, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8128) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.304 generally describes examination requirements.

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

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### 22 TAC §133.65

The Texas Board of Professional Engineers adopts an amendment to §133.65, relating to Examination on the Fundamentals of Engineering, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8128) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.304 generally describes examination requirements.

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

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### 22 TAC §133.67

The Texas Board of Professional Engineers adopts an amendment to §133.67, relating to Examination on the Principles and Practice of Engineering, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8129) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas

Occupations Code §1001.304 generally describes examination requirements.

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

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## 22 TAC §133.69

The Texas Board of Professional Engineers adopts an amendment to §133.69, relating to Waiver of Examinations, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8130) and will not be republished.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; §1001.310 allows for issuance of a Temporary license; §1001.305 allows the board to waive examination requirements.

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

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## 22 TAC §133.75

The Texas Board of Professional Engineers adopts an amendment to §133.75, relating to Examination Irregularities, without changes to the proposed text as published in the September 26,

2008, issue of the *Texas Register* (33 TexReg 8131) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.304 generally describes examination requirements.

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

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## SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

### 22 TAC §133.81

The Texas Board of Professional Engineers adopts an amendment to §133.81, relating to Receipt and Processing of Applications by the Board (formerly Receipt and Process), without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8131) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

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## 22 TAC §133.83

The Texas Board of Professional Engineers adopts an amendment to §133.83, relating to Executive Director Review, Evaluation and Processing of Applications (formerly Staff Review, Evaluation and Processing of Applications), without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8132) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

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Texas Board of Professional Engineers  
Effective date: December 21, 2008  
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For further information, please call: (512) 440-7723



## 22 TAC §133.85

The Texas Board of Professional Engineers adopts an amendment to §133.85, relating to Board Review of and Action on Applications, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8133) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

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Dale Beebe Farrow, P.E.  
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## 22 TAC §133.87

The Texas Board of Professional Engineers adopts an amendment to §133.87, relating to Final Action on Applications, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8134) and will not be republished.

The adopted rule change clarifies the existing rule.

One comment was received from an individual during the public comment period. The comment was neither for nor against the proposed rule language but rather suggested possible clarifying language. No change was made in response to this comment.

The amendment is adopted 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; Texas Occupations Code §1001.308 generally describes issuance of a license if an applicant has met all the requirements for licensure.

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

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## 22 TAC §133.97

The Texas Board of Professional Engineers adopts an amendment to §133.97, relating to Issuance of License, without



changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8134) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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; Texas Occupations Code §1001.003 generally restricts the practice of engineering to qualified individuals.

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

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## CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

### SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

#### 22 TAC §137.1

The Texas Board of Professional Engineers adopts an amendment to §137.1, relating to License Holder Designations, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8135) and will not be republished.

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 adopted rule aligns the rule language with statute clarifying the option of "Inactive Status" includes the ability to use "retired".

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.3

The Texas Board of Professional Engineers adopts an amendment to §137.3, relating to the use of the term "engineer", without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8135) and will not be republished.

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 adopted rule aligns the rule language with statute clarifying the grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.5

The Texas Board of Professional Engineers adopts an amendment to §137.5, relating to the notification of address change,

employment change and criminal convictions, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8136) and will not be republished.

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 adopted rule aligns the rule language with statute identifying the board with a lower case 'b'.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.7**

The Texas Board of Professional Engineers adopts an amendment to §137.7, relating to license expiration and renewal of licenses, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8137) and will not be republished.

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 adopted rule aligns the rule language with statute identifying the board with a lower case 'b' and clarifying the grammar and punctuation.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.9**

The Texas Board of Professional Engineers adopts an amendment to §137.9, relating to renewal of an expired license, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8138) and will not be republished.

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 adopted rule aligns the rule language with statute by clarifying the grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.13**

The Texas Board of Professional Engineers adopts an amendment to §137.13, relating to Inactive Status, with changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8138). A minor change was made to §137.13(a) to correct a reference.

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 adopted rule aligns the rule language with statute identifying the board with a lower case 'b'.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

§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 §1001.206 of the Act and shall not receive any refunds for licensing fees previously paid to the board.

(b) A license holder whose license is inactive must pay an annual fee as established by the board at the time of the license renewal. If the inactive fee is not paid by the date a person's license is to expire, the inactive renewal fee for the expired license shall be assessed the required annual renewal fees and late fees in the same manner as for an active license renewal.

(c) A license holder whose license is inactive is not required to:

(1) comply with the continuing education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder whose license is inactive must:

(1) submit a request in writing for reinstatement to active status,

(2) pay the fee for annual renewal and the fee increase required by §1001.206 of the Act, as applicable, and

(3) comply with the continuing education program requirements for inactive license holders returning to practice as prescribed in §137.17(o) of this chapter.

(e) A license holder may claim inactive status and return to active only once during the year period determined by the renewal schedule of the license. If a license holder claims inactive status and returns to active status during the same annual renewal period, the license holder shall comply with the full continuing education program requirements for that year.

(f) A license holder claiming inactive status may use any term allowed for an active license holder followed by the term "Inactive" or "Retired" on business cards, stationery and other forms of correspondence. Failure to note inactive status in this manner is a violation of the Act and board rules and is subject to disciplinary action by the board.

(g) A license holder on inactive status may provide a reference statement for an applicant for licensure.

(h) Offering or performing engineering services to the public while the license is inactive is a violation of the inactive status and is subject to disciplinary action by the board.

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

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**22 TAC §137.14**

The Texas Board of Professional Engineers adopts an amendment to §137.14, relating to the voluntary surrender of a license, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8139) and will not be republished.

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 adopted rule aligns the rule language with statute by changing the 'b' in Board to lowercase and clarifying the grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.17**

The Texas Board of Professional Engineers adopts an amendment to §137.17, relating to the Continuing Education Program, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8139) and will not be republished.

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 adopted 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 PDH for these activities.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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

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## SUBCHAPTER B. SEALING REQUIREMENTS

### 22 TAC §137.31

The Texas Board of Professional Engineers adopts an amendment to §137.31, relating to the seal specifications, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8140) and will not be republished.

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 adopted rule aligns the rule language with statute by changing the 'b' in Board to lowercase.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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 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.

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 §137.33

The Texas Board of Professional Engineers adopts an amendment to §137.33, relating to Sealing Procedures, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8141) and will not be republished.

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 adopted 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. 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. 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.

No comments were received regarding the Board's adoption of the amended section.

Two comments were received from individuals during the public comment period. One comment was in favor of the rule, and the second was against the rule claiming that it would be an unnecessary burden on engineering firms with out-of-state projects. The Board found that this is not the case and intends to education license holders and registered firms of the requirements during the implementation period. No change was made in response to this comment.

The amendment is adopted 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.

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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Dale Beebe Farrow, P.E.

Executive Director

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## SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

### 22 TAC §137.51

The Texas Board of Professional Engineers adopts an amendment to §137.51, relating to General Practice, with changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8142). A minor change was made to §137.51(d) to correct a reference.

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 adopted rule change 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

#### §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 authorized to offer or perform engineering services in Texas.

(b) License holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.

(c) A license holder shall promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with

these matters will constitute a separate offense of misconduct subject to any of the penalties provided under §1001.502 of the Act.

(d) Any license holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §137.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions available to the board. Professional engineers shall perform or directly supervise the engineering work of any subordinates as characterized in §131.81(10) of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance with §137.77 of this title in a manner that could enable such firm to offer or perform professional engineering services.

(e) A licensed professional engineer may offer or perform engineering services on a full or part-time basis as a firm (including a sole practitioner) or other business entity if registered pursuant to the requirements of Chapter 135 of this title (relating to Firm Registration).

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 §137.57

The Texas Board of Professional Engineers adopts an amendment to §137.57, relating to Engineers Shall be Objective and Truthful, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8142) and will not be republished.

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 adopted rule change aligns the rule language with statute by correcting punctuation.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.63

The Texas Board of Professional Engineers adopts an amendment to §137.63, relating to Engineers' Responsibility to the Profession, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8143) and will not be republished.

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 adopted rule change aligns the rule language with statute by correcting punctuation and grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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

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## SUBCHAPTER D. FIRM AND GOVERNMENTAL ENTITY COMPLIANCE

### 22 TAC §137.71

The Texas Board of Professional Engineers adopts an amendment to §137.71, relating to Firm Names, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8144) and will not be republished.

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 adopted rule change aligns the rule language with statute by correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.73

The Texas Board of Professional Engineers adopts an amendment to §137.73, relating to the use of firm record modifications, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8145) and will not be republished.

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 adopted rule aligns the rule language with statute by correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §137.77

The Texas Board of Professional Engineers adopts an amendment to §137.77, relating to Firm Registration Compliance, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8145) and will not be republished.

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 adopted 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. 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. 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.

One comment in favor of the rule change was received from an individual during the public comment period. No change was made in response to this comment.

The amendment is adopted 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.

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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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 §137.79

The Texas Board of Professional Engineers adopts an amendment to §137.79, relating to the standards for compliance with the Professional Services Procurement Act, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8146) and will not be republished.

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 adopted rule aligns the rule language with statute by removing superfluous language.

One comment was received from an individual during the public comment period. Issues were addressed via a meeting with Board staff. No change was made in response to this comment.

The amendment is adopted 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.

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

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## CHAPTER 139. ENFORCEMENT SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

### 22 TAC §139.11

The Texas Board of Professional Engineers adopts an amendment to §139.11, relating to the confidentiality of complaints and the resultant investigative case file, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8147) and will not be republished.

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 adopted 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.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.13

The Texas Board of Professional Engineers adopts an amendment to §139.13, relating to the general aspects of filing a complaint, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8147) and will not be republished.

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 adopted rule change corrects contact information to the agency and correctly identifies the process for providing complaint information to the board.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.15

The Texas Board of Professional Engineers adopts an amendment to §139.15, relating to the processing of complaints, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8148) and will not be republished.

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 adopted rule aligns the rule language with statute by correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.17

The Texas Board of Professional Engineers adopts an amendment to §139.17, relating to the investigation of complaints, with-



out changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8149) and will not be republished.

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 adopted rule aligns the rule language with statute by clarifying language and correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.19

The Texas Board of Professional Engineers adopts an amendment to §139.19, relating to the final resolution of complaints, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8149) and will not be republished.

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 adopted rule aligns the rule language with statute by clarifying language and correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.21

The Texas Board of Professional Engineers adopts an amendment to §139.21, relating to the reporting of complaint status to the Board, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8150) and will not be republished.

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 adopted rule aligns the rule language with statute by replacing the 'B' in Board with a lowercase letter.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.23

The Texas Board of Professional Engineers adopts an amendment to §139.23, relating to technical consultants, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8151) and will not be republished.

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 adopted rule aligns the rule language with statute by correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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

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## SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

### 22 TAC §139.31

The Texas Board of Professional Engineers adopts an amendment to §139.31, relating to enforcement actions for violations of the Act, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8151) and will not be republished.

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 adopted rule aligns the rule language with statute by clarifying language and correcting grammar.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.33

The Texas Board of Professional Engineers adopts an amendment to §139.33, relating to informal proceedings, with changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8152).

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 adopted rule identifies board documents with their proper legal titles.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

#### §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 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 (2) or (3) of this section 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 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 section which is not informally disposed by Agreed Board 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Beebe Farrow, P.E.

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## 22 TAC §139.35

The Texas Board of Professional Engineers adopts an amendment to §139.35, relating to sanctions and penalties, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8152) and will not be republished.

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 adopted rule aligns the rule language with statute by simplifying language, adding and changing citations, and correcting punctuation.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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

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## SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

### 22 TAC §139.43

The Texas Board of Professional Engineers adopts an amendment to §139.43, relating to license holder with criminal convictions, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8153) and will not be republished.

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 adopted rule aligns the rule language with statute by clarifying language and correcting punctuation.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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 §139.49

The Texas Board of Professional Engineers adopts an amendment to §139.49, relating to license suspension/revocation based on license holder's status review, without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8154) and will not be republished.

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 adopted rule aligns the rule language with statute by changing the 'B' in Board to a lowercase letter.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted 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.

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

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

##### SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

###### 28 TAC §1.501, §1.503

The Commissioner of Insurance adopts amendments to §1.501 and §1.503, concerning the effect of criminal conduct on licenses. The amendments to §1.501 and §1.503 are adopted with updated Insurance Code references in the proposed text published in the August 8, 2008 issue of the *Texas Register* (33 TexReg 6334).

**REASONED JUSTIFICATION.** The adopted amendments to §1.501 and §1.503 are necessary to: (i) implement the Occupations Code Chapter 53; (ii) implement HB 472, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, which amends the Insurance Code Chapter 4151; (iii) clarify an existing non-substantive inconsistency within §1.501(b)(1); (iv) clarify the applicability of the Department's existing guidelines in §1.502 to certain persons from whom biographical information is required; and (v) clarify the applicability of the Department's existing fingerprint requirements in §1.504(a) to certain persons from whom biographical information is required. The Department posted an informal working draft of the proposed amendments on the Department's internet website from November 26 to December 14, 2007, and invited public input. The Department received no comments regarding

the informal working draft of the proposed amendments. The Department formally proposed the amendments in the August 8, 2008 issue of the *Texas Register* (33 TexReg 6334). The Department received no requests for a hearing on the proposal. In response to comments received on the published proposal, the Department has made non-substantive statutory reference updates. The Department has updated the reference to the Insurance Code Articles 21.58A and 21.58C in §1.501(b)(1)(A) and (B) to reference the Insurance Code Chapters 4201 and 4202, respectively. This update is necessary to reflect the non-substantive revised Insurance Code. Further, although amendments to §1.503(1)(A) and (B) were not proposed, the Department has also updated the references to the Insurance Code Articles 21.58A and 21.58C in §1.503(1)(A) and (B) for consistency with the changes made to §1.501(b)(1)(A) and (B). None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

#### *Implementation of the Occupations Code Chapter 53 and HB 472*

The adopted amendments to §1.501 and §1.503, particularly §1.503(1), are necessary to implement the Occupations Code Chapter 53 and HB 472. HB 472 was enacted by the 80th Legislature, Regular Session, effective September 1, 2007, and amends the Insurance Code Chapter 4151. The Insurance Code §4151.051 prohibits a person from acting as or holding itself out as an administrator, as that term is defined under the Insurance Code Chapter 4151, unless the person holds a certificate of authority under the Insurance Code Chapter 4151. For a person submitting an application for a certificate of authority under the Insurance Code Chapter 4151, the Insurance Code §4151.053 requires the Commissioner to determine the fitness of the applicant to hold the authorization, including determining whether granting the authorization would violate a state or federal law. This statutory requirement requires the Department to consider the provisions of 18 U. S. C. §1033 and §1034. These federal provisions prohibit an individual who has been convicted of a state or federal felony involving dishonesty or breach of trust from: (i) engaging in the business of insurance that affects interstate commerce or (ii) participating in such business unless the individual is specifically authorized to do so by an insurance regulatory official. An individual may be in violation of federal law and may be subject to the penalties prescribed in 18 U. S. C. §1033 and §1034 if he or she: (i) has been convicted of a state or federal felony involving dishonesty or breach of trust; (ii) engages in the business of insurance that affects interstate commerce or participates in such business; and (iii) does not hold the authorization required under 18 U. S. C. §1033 and §1034. Such activity is directly relevant to the statutorily required determination under the Insurance Code §4151.053. Further, HB 472 enacts the Insurance Code §4151.301, which authorizes the Department to deny an application for a certificate of authority under Chapter 4151 if the Department determines that an applicant, individually, or through an officer, director, or shareholder, has been convicted of a felony. The Insurance Code §4001.103 also permits the Department to deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the Department. The Insurance Code §4001.103 is made applicable to administrators that are regulated under the Insurance Code Chapter 4151 through the Insurance Code §4001.002. The Insurance Code §4001.002 provides that the Insurance Code Title 13 applies to each person licensed under Title 13 Subtitle B, C, or D. Chapter

4151 administrators are licensed under Subtitle D. Further, the Occupations Code §53.021 authorizes the Department to disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. Additionally, the Government Code §411.106 and §411.087 authorize the Department to access an applicant's criminal history information from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). Collectively, these statutes require and authorize the Department to determine a person's fitness for holding an authorization under the Insurance Code Chapter 4151 or to have the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151 when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. The fitness of an applicant to hold an authorization under Chapter 4151 is especially important because of the unique services offered and performed by administrators under Chapter 4151. Administrators often have control over and access to the financial accounts, claims files, books and records, and premium and contribution collections of an insurer. Additionally, administrators are authorized under the Insurance Code Chapter 4151 to hold premiums, contributions, return premiums, and return contributions in fiduciary bank accounts on behalf of insurers. Further, administrators often have access to or control over certain accounts funded by insurers for claims payment purposes. In addition to affecting the insurance business of an insurer, the actions of administrators also affect Texas consumers and the general public. Very often, consumers interact directly with administrators when discussing claims payment procedures and guidelines, premium or contribution payments, review of medical billing, and other customer service related matters. The nature of this interaction requires the public to place trust in and reliance upon these administrators due to the complex and varied nature of insurance and insurance-related products. As such, the Department considers the determination of the honesty, trustworthiness, and reliability of each of these administrators to be an essential regulatory function. For all of these reasons, the Department has determined that the use of criminal history information is the best means to assist the Department in performing its statutory duty of determining a person's fitness for holding an authorization under the Insurance Code Chapter 4151 or having the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151.

The adopted amendments to §1.501 and §1.503 apply the Department's existing requirements and procedures regarding prior criminal conduct and fraudulent and dishonest activity to Chapter 4151 administrators. Applying the Department's current fingerprinting and criminal history review process to these administrators promotes stability, uniformity, and consistency in Department regulation and reduces additional costs and unnecessary use of resources. Additionally, the adopted amendments to §1.501 and §1.503 will help maintain effective regulation of the insurance industry by ensuring that persons receiving authorizations under the Insurance Code Chapter 4151 or persons having the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151 are honest, trustworthy, and reliable. The adopted amended sections and existing rules in Chapter 1, Subchapter D, specify the requirements for the Department's determination of: (i) the applicant's fitness for a certificate of authority under the Insurance Code Chapter 4151; (ii) the criminal history information of each applicant; and (iii) the criminal history information of any individ-

ual who has the right to control, direct, or manage the affairs of the applicant. The Department has consulted with the DPS and, for the following reasons, has determined that fingerprint checks, and in particular, electronic fingerprint checks, provide the most effective method of identifying an individual and obtaining that individual's criminal history information. First, fingerprint checks prevent individuals with a criminal history in another state from attempting to evade detection by simply moving to Texas. Second, fingerprint collection by an independent third party vendor allows for independent verification of the identity of the individual being fingerprinted and increases confidence in the review process. Third, improvements in electronic fingerprint technology have increased the accuracy of fingerprint capture and have substantially reduced the time frame for processing the fingerprint to obtain the criminal history information. For these reasons, the existing rules in Subchapter D require affected individuals to be fingerprinted by an acceptable vendor. The individual's fingerprints will either be submitted directly to the DPS, if captured by the DPS electronic vendor, or to the Department, and then to the DPS, if captured on paper. Further, the Department understands from the DPS that all fingerprints will be processed through both the DPS and the FBI.

#### *Clarification of §1.501(b) Inconsistency*

The adopted amendment to §1.501(b)(1) is necessary to clarify a non-substantive inconsistency in the introductory paragraph of §1.501(b)(1). The existing introductory paragraph of §1.501(b)(1) applies the provisions of §1.502 to an applicant for, or a holder of, a license, registration, permit, authorization, or certification issued by the Department under certain Insurance Code provisions enumerated in existing §1.501(b)(1)(A) - (U). Section 1.502 contains the Department's current guidelines relating to the matters the Department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Additionally, §1.502 prescribes the crimes which the Department considers to be of such a serious nature that they are of prime importance in determining an applicant's fitness for licensure or authorization. While existing §1.501(b)(1)(R) refers to the Insurance Code Chapter 4151 as an applicable Insurance Code provision under which the Department may issue an authorization, existing §1.501(b)(1), which specifies the various types of applicants and holders of a license, registration, permit, authorization, or certification under the Insurance Code, does not specifically refer to administrators. Administrators are authorized under the Insurance Code Chapter 4151. This omission creates an internal inconsistency between existing §1.501(b)(1) and existing §1.501(b)(1)(R). The adopted amendment to §1.501(b)(1) is necessary to include the term administrator in the introductory paragraph of §1.501(b)(1) to make it consistent with existing §1.501(b)(1)(R).

#### *Clarification of the Applicability of §1.502*

Existing §1.501(b)(3) enumerates the individuals by organization title that are subject to the provisions of §1.502. Section 1.502 contains the Department's current guidelines relating to the matters the Department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Additionally, §1.502 prescribes the crimes which the Department considers to be of such a serious nature that they are of prime importance in determining an applicant's fitness for licensure or authorization. Under existing §1.501(b)(3), the provisions of §1.502 apply to those who are or become partners or officers, directors, or controlling shareholders, including limited liability company members and managers,

of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in §1.501(b)(1) and (2) and from whom biographical information is required. The adopted amendment to §1.501(b)(3) clarifies the applicability of §1.502 to include, in addition to those specified under the existing rule, those who are or become principals and those who have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in §1.501(b)(1) and (2) and from whom biographical information is required. This change is necessary because the existing rule causes uncertainty and confusion for individuals holding organization titles other than those specifically enumerated. For example, existing §1.501(b)(3) refers to officers, directors, controlling shareholders, and limited liability company members and managers but does not refer to a principal. If an individual is a principal and performs the same functions as an individual who holds one or more of the enumerated organization titles, it is unclear if the provisions of §1.502 apply to the individual who is a principal. Additionally, organizations will continue to evolve and will necessarily use different organization titles to describe different individuals involved in the operation of their organizations. An officer of a large organization may perform similar functions as the principal of a smaller organization or sole proprietorship. Therefore, to remove the uncertainty and confusion in existing §1.501(b)(3), the adopted amendment to §1.501(b)(3) adds the term principal to the list of enumerated organization titles and adds to existing §1.501(b)(3) the phrase or have similar responsibilities to. This imposes the requirements of §1.502 on any individual who is or becomes a principal and to any individual who has similar responsibilities to any individual holding any of the enumerated organization titles in §1.501(b)(3), including the organization title of principal. The purpose of existing §1.501(b)(3) is to require the key individuals of an organization with management, discretionary, or decision making authority to comply with the requirements of §1.502 of the subchapter. The adopted amendment is consistent with this purpose. The adopted amendment is authorized under the Occupations Code Chapter 53, the Labor Code Chapter 407A, and the Insurance Code Chapters 801, 822, 823, 841, 843, 844, 846, 981, 1111, 1305, 2551, 2552, 2651, 2652, 4001, 4005, 4051, 4052, 4053, 4054, 4055, 4056, 4101, 4102, 4151, 4152, 4153, 4201, and 4202. Lastly, the adopted amendment to §1.501(b)(5) is necessary to clarify the applicability of §1.502 to persons regulated under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

#### *Clarification of the Applicability of §1.504(a)*

Existing §1.503(2)(A) and (B) enumerate the individuals by organization title that are subject to the provisions of §1.504(a) of the subchapter. Section 1.504(a) contains the Department's current requirements relating to the submission of an individual's complete set of fingerprints and related processing fees and additional identifying information required by the DPS and the FBI for processing the complete set of fingerprints. Under existing §1.501(2)(A), the provisions of §1.504(a) apply to those who are partners or officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in §1.503(1) and from whom biographical information is required. Under existing §1.501(2)(B), the provisions of §1.504(a) apply to those who become partners or officers, directors, or controlling

shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification, or registration under provisions specified in §1.503(1) and from whom biographical information is required. The adopted amendment to §1.503(2)(A) clarifies the applicability of §1.504(a) to those from whom fingerprints are required. This includes, in addition to those specified under the existing rule, those who are principals and those who have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in §1.503(1) and from whom biographical information is required. The adopted amendment to §1.503(2)(B) also clarifies the applicability of §1.504(a) to those from whom fingerprints are required. This includes, in addition to those specified under the existing rule, those who become principals and those who have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification, or registration under provisions specified in §1.503(1) and from whom biographical information is required. These changes are necessary because the existing rules cause uncertainty and confusion for individuals holding organization titles other than those specifically enumerated. For example, existing §1.503(2)(A) and (B) refer to officers, directors, controlling shareholders, and limited liability company members and managers but do not refer to a principal. If an individual is a principal and performs the same functions as an individual who holds one or more of the enumerated organization titles, it is unclear if the provisions of §1.503(2)(A) and (B) apply to the individual who is a principal. Additionally, organizations will continue to evolve and will necessarily use different organization titles to describe different individuals involved in the operation of their organizations. An officer of a large organization may perform similar functions as the principal of a smaller organization or sole proprietorship. Therefore, to remove the uncertainty and confusion in existing §1.503(2)(A) and (B), the adopted amendment to §1.503(2)(A) adds the term principal to the list of enumerated organization titles and adds to existing §1.503(2)(A) the phrase or have similar responsibilities to. Additionally, the adopted amendment to §1.503(2)(B) adds the term principal to the list of enumerated organization titles and adds to existing §1.503(2)(B) the phrase or have similar responsibilities to. These adopted amendments impose the requirements of §1.504(a) on any individual who is or becomes a principal and on any individual who has similar responsibilities to any individual holding any of the enumerated organization titles in §1.503(2)(A) or (B), including the organization title of principal. The purpose of existing §1.503(2)(A) and (B) is to require the key individuals of an organization with management, discretionary, or decision making authority to comply with the requirements of §1.504(a) of the subchapter. The adopted amendment is consistent with this purpose. The adopted amendment is authorized under the Government Code §§411.083, 411.087 and 411.106, the Labor Code Chapter 407A, and the Insurance Code Chapters 801, 822, 823, 841, 843, 844, 846, 981, 1111, 1305, 2551, 2552, 2651, 2652, 4001, 4005, 4051, 4052, 4053, 4054, 4056, 4101, 4102, 4152, 4153, 4201, and 4202. Lastly, the adopted amendment to §1.503(4) is necessary to clarify the applicability of §1.504(a) to persons regulated under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

HOW THE SECTIONS WILL FUNCTION. The following is a section-by-section overview of the adopted amendments.

§1.501. Purpose and Application. The adopted amendment to §1.502(b)(1) adds the term administrator to the existing introductory language of §1.502(b)(1). The adopted amendment to §1.502(b)(3) adds the term principal to the enumerated organization titles of individuals that are subject to the provisions of §1.502. Finally, the adopted amendment to §1.502(b)(5) clarifies that each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval) is also subject to the provisions of §1.502.

§1.503. Application of Fingerprint Requirement. The adopted amendment to §1.503(1) applies the fingerprinting requirements of existing §1.504(a) to administrators under the Insurance Code Chapter 4151. The adopted amendment to §1.503(2)(A) and (B) applies the fingerprinting requirements of existing §1.504(a) to certain individuals. This include individuals who: (i) are required to provide biographical information to the Department; and (ii) are or have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in §1.503(1). This also includes individuals who: (i) are required to provide biographical information to the Department; and (ii) become or will have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification or registration under provisions specified in §1.503(1). Finally, the adopted amendment to §1.503(4) applies the fingerprinting requirements of existing §1.504(a) to each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

##### §1.501(b)(1)(A) and (B)

Comment: A commenter states that §1.501(b)(1)(A) and (B) contain outdated references to the Insurance Code. The reference to the Insurance Code Article 21.58A in §1.501(b)(1)(A) should be updated to reference the Insurance Code Chapter 4201. The reference to the Insurance Code Article 21.58C in §1.501(b)(1)(B) should be updated to reference the Insurance Code Chapter 4201.

Agency Response: The Department agrees and §1.501(b)(1)(A) and (B) as adopted reflect the updated Insurance Code references.

##### §1.503(2)(A) and (B)

Comment: The commenter states that introduction of the term principal to the list of enumerated organization titles from whom biographical information is required may extend the applicability of the sections to individuals outside the scope of the existing rule and statutes. The commenter encourages the Department to provide further clarification of the term principal by further defining individuals who are subject to this term. The commenter further asserts that inserting the language have similar responsibilities to in proposed §1.503(2)(A) and (B) is ambiguous and open to interpretation. The commenter recommends that the Department include language such as, has responsibilities the same as, or provide clarification as to the extent of the similarities.

Agency Response: The Department disagrees with both of the commenter's recommendations. The Department does not consider the amendments to §1.503 to substantively change the De-

partment's existing interpretation and application of the requirements of §1.503. Rather, the amended language codifies the Department's existing interpretation and application of the requirements of §1.503. For example, in past situations where a particular individual has held an organizational title other than those specifically enumerated in §1.503, the Department has applied the existing requirements of §1.504(a) to the individual, provided that the individual had similar responsibilities to a partner, officer, director, or controlling shareholder for the particular organization. Further, the Department has not experienced difficulty in determining whether a particular individual holds responsibilities similar to a partner, officer, director, or controlling shareholder for a particular organization, such as management, discretionary, or decision making authority. However, the Department recognizes that some individuals have found the existing requirements to be confusing. As a result, the term principal and the phrase or have similar responsibilities to has been added to §1.503 in order to remove any uncertainty and confusion in the existing requirements.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

Neither for nor against, with recommended changes: United Healthcare of Texas, Incorporated; UnitedHealthcare Insurance Company.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code, the Government Code, and the Insurance Code. The Occupations Code Chapter 53 generally prescribes the procedures a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. The Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. The Government Code §411.106 permits the Department to obtain criminal history record information from DPS that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the Department. The Government Code §411.087 permits the Department to obtain through the FBI criminal history record information maintained or indexed by the FBI that pertains to that person or to obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person. The Insurance Code §4001.002(a) provides that, except as otherwise provided by the Insurance Code, the provisions of the Insurance Code Title 13 apply to the persons licensed under Title 13 Subtitle B, C, or D. The Insurance Code §4001.005 authorizes the Commissioner to adopt rules necessary to implement the Insurance Code Title 13. The Insurance Code §4001.103 authorizes the Department to deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the Department. The Insurance Code §4151.006 provides that the Commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement the Insurance Code Chapter 4151. The Insurance Code §4151.051 prohibits an individual, corporation, organization, trust, partnership, or other legal entity from acting as or holding itself out as an administrator unless the entity is covered by and is engaging in business under a certificate of authority issued under the Insurance Code Chapter 4151. The Insurance Code §4151.053 prescribes the

circumstances under which the Commissioner shall approve a certificate of authority under the Insurance Code Chapter 4151, including whether granting the application would violate a federal or state law. The Insurance Code §4151.211 authorizes the Department to determine the trustworthiness and integrity of a person seeking to acquire an ownership interest in an applicant holder under the Insurance Code Chapter 4151. The Insurance Code §4151.301 provides that the Department may deny an application for a certificate of authority or discipline the holder of a certificate of authority under the Insurance Code Chapter 4151 if the applicant or holder, individually, or through an officer, director, or shareholder, has been convicted of a felony. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

*§1.501. Purpose and Application.*

(a) The purpose of this subchapter is to implement Chapter 53, Occupations Code, and sections and articles of the Insurance Code and Occupations Code that require and authorize the department to determine a person's fitness for holding a license, authorization, certification, permit, or registration, or a person's fitness to have the ability to control licensed, registered, permitted, certificate holding, and authorized entities, when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. This subchapter also establishes the procedure by which the department may obtain criminal history information on persons applying for a license, authorization, certification, permit, or registration, or acquiring the ability to control an entity holding or seeking a license, authorization, certificate, permit, or registration. To effect this implementation the department has developed guidelines in §1.502 of this subchapter (relating to Licensing Persons with Criminal Backgrounds) identifying the types of criminal offenses that directly relate to the duties and responsibilities of licensed and authorized insurance activities which are of such a serious nature that they are of prime importance in determining the person's fitness for licensure, authorization, certification, permit or registration, or control of a licensed, registered, permitted, certificate holding, or authorized entity.

(b) Section 1.502 of this subchapter applies to the following persons:

(1) applicants for, or holders of, any license, registration, permit, authorization, or certification, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title agents, title escrow officers, title attorneys, utilization review agents, independent review organizations, viatical and life settlement registrants, workers' compensation health care networks, management contractors, and administrators, under the following Insurance Code provisions:

- (A) Chapter 4201;
- (B) Chapter 4202;
- (C) Chapter 981;
- (D) Chapter 1111;
- (E) Chapter 1305;
- (F) Chapter 2552;
- (G) Chapter 2651 Subchapter A;
- (H) Chapter 2652;
- (I) Chapter 4001;
- (J) Chapter 4051;

- (K) Chapter 4052;
- (L) Chapter 4053;
- (M) Chapter 4054;
- (N) Chapter 4055;
- (O) Chapter 4056;
- (P) Chapter 4101;
- (Q) Chapter 4102;
- (R) Chapter 4151;
- (S) Chapter 4152;
- (T) Chapter 4153; or

(U) any other provision providing for any type of license, registration, certification, permit, or authorization that the department may deny or revoke because of a criminal offense of the applicant or license holder;

(2) applicants for, or holders of, a license, registration, permit or authorization issued by the State Fire Marshal's Office, including the following provisions:

- (A) Insurance Code Article 5.43-1;
- (B) Insurance Code Article 5.43-2;
- (C) Insurance Code Article 5.43-3;
- (D) Occupations Code Chapter 2154; or

(E) any other provision providing for any type of license, registration, or authorization that the State Fire Marshal's Office may deny or revoke because of a criminal offense of the applicant or license holder;

(3) those who are, become, or have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in paragraphs (1) and (2) of this subsection and from whom biographical information is required;

(4) with regard to insurance companies, health maintenance organizations, holding companies, and other related entities, an individual who is required to provide biographical information and who:

(A) is the applicant, if the applicant is an individual, or an officer, director, or controlling shareholder of the applicant seeking an authorization as an insurer as described in Insurance Code Chapter 801 or an authorization under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552;

(B) becomes an officer, director, or controlling shareholder of an entity authorized as an insurer as described in Insurance Code Chapter 801 or an entity authorized under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552; or

(C) is the applicant if such person is an individual, or the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, for each applicant under §7.209 of this title (relating to Form A); and

(5) each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).



(c) As used in §1.502 of this subchapter, the terms "license holder," "licensee," and "authorization holder" shall include all persons listed in subsection (b) of this section.

(d) As used in §1.502 of this subchapter, the terms "license" and "authorization" shall include all types of licenses, registrations, certificates, permits, or authorizations listed in subsection (b) of this section.

*§1.503. Application of Fingerprint Requirement.*

The fingerprint requirement in §1.504(a) of this subchapter (relating to Fingerprint Requirement) applies to the following individuals:

(1) applicants for any license, registration, certification, authorization or permit, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title agents, title escrow officers, viatical and life settlement registrants, workers' compensation health care networks, management contractors, and administrators, under the following Insurance Code provisions:

- (A) Chapter 4201;
- (B) Chapter 4202;
- (C) Chapter 981;
- (D) Chapter 1111;
- (E) Chapter 1305;
- (F) Chapter 2651, Subchapter A;
- (G) Chapter 2652;
- (H) Chapter 4001;
- (I) Chapter 4051;
- (J) Chapter 4052;
- (K) Chapter 4053;
- (L) Chapter 4054;
- (M) Chapter 4056;
- (N) Chapter 4101;
- (O) Chapter 4102;
- (P) Chapter 4151;
- (Q) Chapter 4152; or
- (R) Chapter 4153.

(2) with the exception of those individuals associated with licenses issued to corporations and limited liability companies under Insurance Code Chapter 2651 Subchapter A, individuals who are required to provide biographical information and who:

(A) are or have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in paragraph (1) of this section; or

(B) become or will have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification or registration under provisions specified in paragraph (1) of this section.

(3) with regard to insurance companies, health maintenance organizations, holding companies, and other related entities, an

individual who is required to provide biographical information and who:

(A) is the applicant, if the applicant is an individual, or an officer, director, or controlling shareholder of the applicant seeking an authorization as an insurer as described in Insurance Code Chapter 801 or an authorization under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552;

(B) becomes an officer, director, or controlling shareholder of an entity authorized as an insurer as described in Insurance Code Chapter 801 or an entity authorized under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552; or

(C) is the applicant if such person is an individual, or the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, for each applicant under §7.209 of this title (relating to Form A).

(4) each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

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 December 1, 2008.

TRD-200806230  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: December 21, 2008  
Proposal publication date: August 8, 2008  
For further information, please call: (512) 463-6327

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 353. INTRODUCTORY PROVISIONS**

**SUBCHAPTER I. ETHICS AND CONFLICTS OF INTEREST**

**31 TAC §353.130**

The Texas Water Development Board (Board) adopts new §353.130 (regarding Financial Analysts and Service Providers) in new Subchapter I (regarding Ethics and Conflicts of Interest) in Chapter 353 (regarding Introductory Provisions) without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8480). The text of the rule will not be republished.

The Board proposed the repeal of Chapter 365 (regarding Investment Rules) in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8481). The Board determined that the rules in Chapter 365 are no longer necessary because on September

23, 2008, the Board adopted a policy document that contains the investment policy and strategies identical to those in Chapter 365. However, the provisions contained in §365.10(c) and (d) (regarding Ethics and Conflict of Interest) concern the avoidance and reporting of conflicts of interest by financial analysts and service providers, and are required to be adopted by rule pursuant to Texas Government Code §2263.004.

These provisions are hereby adopted by rule in §353.130.

No comments were received regarding the proposed new rule.

The new rule is adopted under the authority of the Texas Water Code §6.101, which provides the Board with the authority to adopt rules necessary to carry out the powers and duties of the Board.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on December 1, 2008.

TRD-200806286  
Kenneth L. Petersen  
General Counsel  
Texas Water Development Board  
Effective date: December 21, 2008  
Proposal publication date: October 10, 2008  
For further information, please call: (512) 463-8061



## CHAPTER 365. INVESTMENT RULES

The Texas Water Development Board (Board) adopts the repeal of Chapter 365, Investment Rules, including Subchapter A, §§365.1, 365.2, and 365.5 - 365.10 (relating to General Provisions) and Subchapter B, §§365.11 - 365.21 (relating to Investment Procedures) without changes to the proposal as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8481).

The Board determined that the rules in Chapter 365 are no longer necessary because on September 23, 2008, the Board adopted a policy document that contains the investment policy and strategies identical to those in Chapter 365. The provisions in §365.10(c) and (d) (relating to Ethics and Conflict of Interest) continue to be necessary under Texas Government Code §2263.004 and were simultaneously proposed as new §353.150 in new Subchapter I, Chapter 353 of this title. This rule is adopted elsewhere in this issue of the *Texas Register*.

No comments were received regarding the repeals.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 31 TAC §§365.1, 365.2, 365.5 - 365.10

The repeals are adopted under the authority of the Texas Water Code §6.101, which provides the Board with the authority to adopt rules necessary to carry out the powers and duties of the Board.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on December 1, 2008.

TRD-200806277  
Kenneth L. Petersen  
General Counsel  
Texas Water Development Board  
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Proposal publication date: October 10, 2008  
For further information, please call: (512) 463-8061



## SUBCHAPTER B. INVESTMENT PROCEDURES

### 31 TAC §§365.11 - 365.21

The repeals are adopted under the authority of the Texas Water Code §6.101, which provides the Board with the authority to adopt rules necessary to carry out the powers and duties of the Board.

No other article, statute or code is affected by the adoption.

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

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

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

#### CHAPTER 362. DEFINITIONS

##### 40 TAC §362.1

The Texas Board of Occupational Therapy (TBOTE) adopts an amendment to §362.1, concerning Definitions, with changes to the proposed text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7147) and will be republished.

The adopted section changes the definitions to recognize new definitions for OT and OTA and removed the definitions for Health Care, Regular License, Supervision, Temporary License, LOT and LOTA.

The amendment adds language to 40 TAC Part 12, §362.1, to clarify Definitions.

Two comments were received regarding adoption of the amendment. In the definition of Occupational Therapy Assistant, one commentator suggested placing the phrase "and who is required to be under the continuing supervision of an OT," at the end of the first sentence of the definition. The Board adopted this suggestion. The same commentator suggested replacing "and" with "and/or" between the words Certified Occupational Therapy Assistant (COTA) and a Licensed Occupational Therapy Assistant (LOTA), in the second sentence of the definition. The Board replaced "and/or" with "or," in order to meet the commentator's concern. The other commentator asked whether the proposed definition changes would change the way OT's and OTA's sign their credentials such that they would no longer use OTR, LOT, COTA, or LOT. The Board will address this question at a later meeting.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454 Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

#### §362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

- (1) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.
- (2) AOTA--American Occupational Therapy Association.
- (3) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.
- (4) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).
- (5) Certified Occupational Therapy Assistant (COTA)--An alternate term for a Licensed Occupational Therapy Assistant. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR or LOT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.
- (6) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:
  - (A) A fine not to exceed \$4,000;
  - (B) Confinement in jail for a term not to exceed one year; or
  - (C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).
- (7) Client--The entity that receives occupational therapy. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).
- (8) Complete Application--Notarized application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly and all other required documents.

(9) Complete Renewal--Contains renewal fee, renewal form with signed continuing education affidavit, home/work address(es) and phone number(s), and jurisprudence examination with at least 70% of questions answered correctly.

(10) Continuing Education Committee--Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

(11) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(12) Direct Contact--Refers to contact with the client and includes face-to-face in person or via visual telecommunications.

(13) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification Examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

(19) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(20) Investigation Committee--Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

(21) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

(22) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination with multiple choice or true-false questions. The passing score is 70%.

(23) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(24) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status Synonymous with the term health care condition.

(25) NBCOT--National Board for Certification in Occupational Therapy.

(26) Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and close personal supervision.

(27) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(28) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(29) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist who is designated as an Occupational Therapist, Registered (OTR) and a Licensed Occupational Therapist (LOT).

(30) Occupational Therapist, Registered (OTR)--An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(31) Occupational Therapy Practice--includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL) instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental

activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(32) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA) or a Licensed Occupational Therapy Assistant (LOTA).

(33) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(34) Occupational Therapy Practitioners-- Occupational Therapists, and Occupational Therapy Assistants licensed by this board.

(35) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(36) Place(s) of Business--Any facility in which a licensee practices.

(37) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

(38) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(39) Rules--Refers to the TBOTE Rules.

(40) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

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 December 1, 2008.

TRD-200806224

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: December 21, 2008

Proposal publication date: August 29, 2008

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



# 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

State Board of Dental Examiners

### Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 102, concerning Fees. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 102. Fees.

§102.1. Fee Schedule.

§102.2. Open Records Requests.

TRD-200806319

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: December 3, 2008



The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 104, concerning Continuing Education. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 104. Continuing Education.

§104.1. Requirement.

§104.2. Providers.

§104.4. Penalties.

§104.5. Auditable Documentation.

§104.6. Audits.

TRD-200806320

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: December 3, 2008



The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 113 concerning Requirements for Dental Offices. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 113. Requirements for Dental Offices.

§113.1. Definitions.

§113.2. X-Ray Laboratories.

TRD-200806321

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: December 3, 2008



Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 30, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter A,

State Board of Education: General Provisions, and Subchapter B, State Board of Education: Purchasing and Contracts.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 30, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-200806328

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: December 3, 2008



The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 30, Administration, pursuant to the Texas Government

Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter AA, Commissioner of Education: General Provisions, and Subchapter BB, Commissioner of Education: Purchasing and Contracts.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 30, Subchapters AA and BB, continue to exist.

The public comment period on the review of 19 TAC Chapter 30, Subchapters AA and BB, begins December 12, 2008, and ends January 12, 2009. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-200806327

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: December 3, 2008



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.



**Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards  
Horizontal Scale Scores Required to Achieve the "Met Standard" Level  
At the Standard Equivalent to the Panel's Recommendation**

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3										
4				2100	32	2100				
5									40	2100
6										
7					44	2100				
8							48	2100	50	2100
9	52	2100	42	2100						
10	56	2100			73	2100	50	2100	55	2100
11	60	2100			73	2100	55	2100	55	2100
<b>Spanish-Version Tests</b>										
3										
4					32	2100				
5									40	2100
6										

\* An essay rating of 2 or higher is required for Met Standard on the grades 4 and 7 writing tests and the grades 10 and 11 English language arts tests.

**Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards  
Horizontal Scale Scores Required to Achieve Commended Performance**

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3										
4					32	2400				
5									40	2400
6										
7					44	2400				
8							48	2400	50	2400
9	52	2400	42	2400						
10	56	2400			73	2400	50	2400	55	2400
11	60	2400			73	2400	55	2400	55	2400
<b>Spanish-Version Tests</b>										
3										
4					32	2400				
5									40	2400
6										

\*An essay rating of 3 or higher is required for Commended Performance on the grades 4 and 7 writing tests.

**Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards  
Vertical Scale Scores Required to Achieve the "Met Standard" Level  
At the Standard Equivalent to the Panel's Recommendation**

Grade	Mathematics		Reading	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	500	36	483
4	42	554	40	554
5	44	603	42	620
6	46	637	42	644
7	48	670	48	670
8	50	700	48	700
<b>Spanish-Version Tests</b>				
3	40	503	36	503
4	42	555	40	555
5	44	627	42	623
6	46	650	42	650

Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards  
 Vertical Scale Scores Required to Achieve Commended Performance

Grade	Mathematics		Reading	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	640	36	659
4	42	698	40	725
5	44	738	42	763
6	46	783	42	797
7	48	823	48	829
8	50	850	48	850
<b>Spanish-Version Tests</b>				
3	40	649	36	657
4	42	692	40	694
5	44	755	42	744
6	46	775	42	775

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

Request for Proposals: Food and Fibers Research Grant Program

### Statement of Purpose.

The Texas Department of Agriculture (TDA) is requesting proposals for projects for the Food and Fibers Research Grant Program (FFRGP). The FFRGP is administered by TDA under the direction of the Food and Fibers Research Council (Council). The purpose of this program is to provide a vehicle for the Texas fibers and oilseeds industries to facilitate and support applied research in Texas by engaging in surveys, research, and investigations relating to the use of cotton fiber, cottonseed, oilseed products, other products of the cotton plant, wool, mohair, and other textile products. Funded projects are expected to yield applicable results within 1 - 6 years.

### Submission Dates/Locations.

Forms required for submitting a proposal are available by accessing TDA's website at: [www.tda.state.tx.us](http://www.tda.state.tx.us), or by e-mailing the FFRGP at: [grants@tda.state.tx.us](mailto:grants@tda.state.tx.us). One hard copy and one electronic copy of the proposal in Microsoft Word format must arrive no later than 5:00 p.m. on March 2, 2009 to one of the following: **Physical Address:** Texas Department of Agriculture Food and Fibers Research Grant Program, Attn: Lindsay Dickens, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701; or **Mailing Address:** Texas Department of Agriculture, Food and Fibers Research Grant Program, Attn: Lindsay Dickens, P.O. Box 12847, Austin, TX 78711.

The electronic copy should be e-mailed to [grants@tda.state.tx.us](mailto:grants@tda.state.tx.us).

### Eligibility.

Grant proposals will be accepted from any state-supported university, state agency, or federal agricultural agency located in the State of Texas.

### Funding Areas.

All proposals must meet at least one topical area listed below:

1. Cotton research related to cotton production, quality, and processing such as breeding, harvesting, pest and disease control, ginning or storing;
2. Sheep and goat research related to wool and mohair production, quality, and processing;
3. Oilseed and nutrition research related to production, quality, processing, and consumption such as plant breeding, harvesting, extraction, and utilization as a food or biofuel. Oilseeds include but are not limited to cottonseed, peanut and sunflower seeds;
4. Textile and natural fibers research related to cotton, wool, and mohair such as fiber characteristic testing, textile production, quality improvement, functionalization and utilization; and
5. Texas Agricultural Research Database continued production, maintenance, upgrades and expansions.

### Proposal Requirements.

### Funding Parameters:

It is anticipated that most projects will be funded in a range of \$15,000 - \$40,000 per year. Projects that exceed this range must have strong justification and a potential for providing significant, demonstrable benefits to Texas agriculture. Projects will be awarded for two years (September 1, 2009 - August 31, 2011). Projects may be re-submitted in subsequent years for continued funding.

TDA reserves the right to fund proposals partially or fully. Where more than one proposal on an eligible research topic is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

### Form Requirements:

Proposals must be submitted on form FF-100 for consideration.

FF-100 shall not exceed 6 pages. (2 pages for Personnel/contact information, 3 pages for research proposal, and 1 page for budget information.)

The required forms are available by accessing TDA's website at <http://www.tda.state.tx.us/> or by e-mailing the FFRGP at: [grants@tda.state.tx.us](mailto:grants@tda.state.tx.us).

### Technical Requirements:

Include the following items:

1. **Personnel/Contact Information - Do Not Exceed Two Pages.** Include title, performing institution, principal investigator contact information and experience, responsible contracts officer information, and cooperating investigators and their experience.
2. **Proposal Summary - Do Not Exceed 200 Words.** Briefly summarize the research for which you are requesting funding.
3. **Research Proposal - Do Not Exceed Three Pages.** Include the following:
  - A. Background - Statement of the research problem and its general background;
  - B. Objectives - Concise outline of specific, feasible research objectives;
  - C. Research Plan - Strategies, procedures, and methodologies used in addressing the questions asked; and
  - D. Commercialization/Benefits - Description of the expected results and their anticipated contributions to agriculture in Texas, including the potential for technology transfer and commercialization.
4. **Performance and Budget Information.** Include the following:
  - A. Published Reports - Estimated number of reports that will be published or presented during the funding period;
  - B. Project Budget - Include categories of Salary, Travel, Materials and Operating Expenses, Equipment, Other, Contracts, and Indirect (not to exceed 10%). Round budget items to the nearest \$100;
  - C. Supporting and Leveraged Funds Table - The FFRGP does not have a specific supporting funds requirement, but the ability of a project to

claim supporting or leveraged funds will be a positive factor in the review process. Supporting and leveraged funds must be documented on the budget submission form and reported on a quarterly basis; and

D. Indirect Costs - The FFRGP will allow 10% of the grant award amount to be used for the reimbursement of indirect costs. Additionally, up to 20% of the grant award amount may be claimed as Supporting Funds. See "C" above.

*Budget Information:*

FFRGP projects are paid on a cost reimbursement basis.

1. **Eligible Expenses.** Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible. Expenses must be properly documented with sufficient backup detail, including copies of invoices. Examples of eligible expenditures are:

A. Personnel costs - both salary and benefits;

B. Travel - domestic (Reimbursement for foreign travel is discouraged);

C. Materials and direct operating expenses - equipment that costs less than \$5,000 per unit, research and office supplies, postage, telecommunications, printing, etc.;

D. Equipment - nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more; and

E. Other expenses - any expenses that do not fall into the above categories;

F. Contracts - agreements made with other universities or private parties to perform a portion of the award; and

G. Indirect expenses - the FFRGP limits reimbursable indirect expenses to 10% of the grant award.

2. **Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

A. Alcoholic beverages;

B. Entertainment;

C. Contributions, charitable or political;

D. Expenses falling outside of the contract period;

E. Expenses for expenditures not listed in the project budget; and

F. Expenses that are not adequately documented.

3. **Description of the Budget.** Present an overall project budget and include the following items in the budget description:

A. Personnel services: Grant funds may be used for directly supporting salaries and wages of investigators, co-investigators, graduate, and technical assistants. Support personnel can receive salaries and social/fringe benefits in proportion to the time devoted to the research project.

B. Travel: Grant funds used for travel expenses, domestic or foreign, must be limited to the State of Texas established mileage, per diem, and lodging policies. Reimbursement for foreign travel is discouraged, but may be paid on a case-by-case basis. To be eligible for reimbursement, foreign travel shall be approved in advance by the Commissioner or his designee.

C. Materials and Direct Operating Expenses: Expenses that are directly related to the grantee's day-to-day operation of the grant project that are not included in any of the Grantee's other standard budget categories

and has an acquisition cost of less than \$5,000 per unit. Grantees must allocate costs on a prorated basis for shared usage, including research and office supplies, postage, telecommunications, and printing.

D. Equipment: Defined as tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Applicants must submit with their grant applications a list of all proposed equipment purchases for approval. Grantees are not authorized to purchase any equipment until they have received written approval to do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The FFRGP may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grantee has demonstrated that the requested equipment is necessary, essential to the successful operation of the grant project, and reasonable in cost. Equipment purchased with FFRGP funds remains the property of TDA and is subject to TDA inventory reporting requirements.

E. Professional/Contractual: Any contract or agreement entered into by a grantee and a third party that obligates grant funds must be in writing and consistent with Texas law. Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

F. Indirect Expenses: Grant funds may be used for indirect costs up to 10% of the grant award amount.

G. Supporting/Leveraged Funds: The FFRGP is required by the Texas Legislature to report the leveraged funds its projects receive. These leveraged funds include other grants for the same or related projects, in-kind contributions of salary, materials, and/or equipment usage, and overhead attributable to the project (up to 20% of the grant award). Quarterly reports listing leveraged funds will be required throughout the year detailing the source and amount.

H. Additional Budget Information: Provide any additional information you think would be helpful to the review committee including equipment justification, subcontract recipients and amounts, list of key personnel to be paid, or description of other large item expenditures.

**Evaluation of Proposals.**

One or more review panels may evaluate the proposals, including the Council.

The proposals will be evaluated on the following elements:

1. the scientific and technological merit of the proposal;
2. the potential of meeting the applied research requirement with expected application of useful results for agriculture within 1 - 6 years of the project's initiation;
3. the feasibility of the objectives;
4. the anticipated benefits to agriculture and the environment in Texas;
5. the potential for the research to be commercialized;
6. the requested budget in relation to the research plan; and
7. the ability to leverage additional funds.

**Award Information and Notification.**

The Council will approve projects for funding by the FFRGP. The FFRGP reserves the right to accept or reject any or all proposals submitted. TDA and the Council are under no legal or other obligation to execute a grant on the basis of a submitted Request for Proposals (RFP). TDA shall not pay for any costs incurred by any entity in responding to this RFP.

The public announcements and written notifications will be made to all applicants and their affiliated research institution. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

#### General Compliance Information.

1. Prior to accepting the research grant and signing the grant agreement, researchers will be provided a copy of the TDA reporting requirements for their review. This document will explain billing procedures, quarterly and annual reporting requirements, procedures for requesting a change in the project scope or budget, and other miscellaneous items.
2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.
3. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and the Council.
4. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.
5. While FFRGP attempts to observe the strictest confidence in handling the research proposals, it cannot guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipient's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas laws, including the Texas Public Information Act. There shall be no restriction on the publication of research results except when taking into consideration effects of prior publication on possible subsequent patent and license to use copyrighted material.
6. Control of the ownership and disposition of all patentable products and inventories shall be agreed to by Grantee and TDA. A copy of the intellectual property policy should be made available to the FFRGP upon request.
7. Grant recipients must submit information on their funded project to the Texas Agricultural Research Database.
8. Awarded grant projects must remain in full compliance with state and federal laws and regulations. Noncompliance with such law may result in termination by TDA.
9. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.
10. If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

11. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: [www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc)

12. Grant management guidelines for FFRGP grants will be published under separate cover.

For any questions: Please contact Ms. Lindsay A. Dickens, Grants Specialist, at (512) 463-6695 or by e-mail at: [grants@tda.state.tx.us](mailto:grants@tda.state.tx.us).

TRD-200806310

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: December 2, 2008

### Office of Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/01/08 - 12/07/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/01/08 - 12/07/08 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009<sup>3</sup> for the period of 11/01/08 - 11/30/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/08 - 11/30/08 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/09 - 03/31/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/09 - 03/31/09 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009<sup>1</sup> for the period of 01/01/09 - 03/31/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code<sup>1</sup> for the period of 01/01/09 - 03/31/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009<sup>4</sup> for the period of 01/01/08 - 03/31/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/09 - 03/31/09 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009<sup>1</sup> for the period of 01/01/09 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/08 - 12/31/08 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/08 - 12/31/08 is 5.00% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

<sup>4</sup>Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200806218

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 25, 2008



## Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/08/08 - 12/14/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/08/08 - 12/14/08 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 12/01/08 - 12/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 12/01/08 - 12/31/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200806300

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 2, 2008



## Texas Education Agency

### Request for Applications Concerning 2009-2010 Prekindergarten Early Start Grant Program Tier 1, Cycle 1, Year 1

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-106 from school districts and open-enrollment charter schools that meet the following criteria: (1) the applicant did not participate in the Prekindergarten Expansion Grant Program, Cycle 14 (i.e., did not receive grant funding during the 2008-2009 school year); and (2) the average of the applicant's last three consecutive years of Grade 3 Texas Assessment of Knowledge and Skills (TAKS) scores (i.e., 2005-2006, 2006-2007, and 2007-2008) is below the state average in either reading or mathematics. Priority will be given to school districts in which the average of the last three consecutive years of Grade 3 TAKS scores is below the state average in both reading and mathematics. Education service

centers are eligible to apply as fiscal agents of shared services arrangements.

All applicants eligible for Tier 1 funding are included on the list of eligible applicants posted on the TEA Grant Opportunities webpage at <http://www.tea.state.tx.us/opge/disc/calendar/759-09/Prek-Tier1.pdf>.

**Description.** The purpose of the Prekindergarten Early Start Grant Program Tier 1, Cycle 1, Year 1, is to provide funds to school districts and open-enrollment charter schools to prepare students to enter kindergarten on or above grade level. Grant recipients are required to: (1) identify eligible prekindergarten children and communicate the availability of services to their families and caregivers; (2) assess the needs of those children and provide them with quality preschool services based on proven school readiness components that include high-quality, developmentally appropriate, and rigorous curriculum; continuous monitoring of student progress in the classroom; and professional development, including mentoring, to promote student achievement with the goal of dramatically improving early literacy, language, mathematics, and social development skills; (3) create and implement a School Readiness Integration Partnership that outlines the means by which the grantee will coordinate efforts, services, resources, program administration, and curriculum and instruction among local public-school prekindergarten programs, licensed child care providers, and Head Start programs; (4) participate in the School Readiness Certification System, a valid, research-based automated system through which an early childhood education program submits an application demonstrating the program's record of cognitive, social, and emotional development of young children to be certified as a school ready program; and (5) design and develop a prekindergarten service program that is sustainable after the end of the Prekindergarten Early Start Grant Program, with sufficient funding from sources other than grant funds.

The goal of the Prekindergarten Early Start Grant Program is to expand the state's capacity to provide high-quality prekindergarten services to a greater number of eligible preschool students. The Prekindergarten Early Start Grant Program is designed to achieve this goal through its support of coordinated community partnerships that build on existing local resources to provide instructional services that help children reach their full potential as learners.

**Dates of Project.** The Prekindergarten Early Start Grant Program Tier 1, Cycle 1, Year 1, will be implemented during the 2009-2010 school year. Applicants should plan for a starting date of no earlier than September 1, 2009, and an ending date of no later than August 31, 2010.

**Project Amount.** The Prekindergarten Early Start Grant Program Tier 1, Cycle 1, Year 1, will be contingent upon funding being approved by the 81st Texas Legislature, 2009. Based upon appropriation in previous legislative sessions, it is anticipated that approximately \$31,561,013 will be available for funding Prekindergarten Early Start Grant Program Tier 1, Cycle 1, Year 1, grants during the September 1, 2009, through August 31, 2010, project period. The number of projects funded will depend on the number of applicants for funding and the amount awarded to applicants selected for funding. Projected maximum grant amounts for all eligible applicants are included on the list of eligible applicants posted on the TEA Grant Opportunities webpage at <http://www.tea.state.tx.us/opge/disc/calendar/759-09/Prek-Tier1.pdf>. This project is funded 100 percent from state funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to



be considered for funding. 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://burlleson.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 Sarah Averill, 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://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, February 10, 2009, to be eligible to be considered for funding.

TRD-200806330

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: December 3, 2008



### Request for Applications Concerning 2009-2010 Prekindergarten Early Start Grant Program Tier 3, Year 1

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-105 from school districts and open-enrollment charter schools that meet the following criteria: (1) the applicant participated in the Prekindergarten Expansion Grant Program, Cycle 14 (i.e., did receive grant funding during the 2008-2009 school year); and (2) the average of the applicant's last three consecutive years of Grade 3 Texas Assessment of Knowledge and Skills (TAKS) scores (i.e., 2005-2006, 2006-2007, and 2007-2008) is at or below the state average in either reading or mathematics. Education service centers are eligible to apply as fiscal agents of shared services arrangements.

All applicants eligible for Tier 3 funding are included on the list of eligible applicants posted on the TEA Grant Opportunities webpage at <http://www.tea.state.tx.us/opge/disc/calendar/762-09/Prek-Tier3.pdf>.

**Description.** The purpose of the Prekindergarten Early Start Grant Program Tier 3, Year 1, is to provide funds to school districts and open-enrollment charter schools to prepare students to enter kindergarten on or above grade level. Grant recipients are required to: (1) identify eligible prekindergarten children and communicate the avail-

ability of services to their families and caregivers; (2) assess the needs of those children and provide them with quality preschool services based on proven school readiness components that include high-quality, developmentally appropriate, and rigorous curriculum; continuous monitoring of student progress in the classroom; and professional development, including mentoring, to promote student achievement with the goal of dramatically improving early literacy, language, mathematics, and social development skills; (3) create and implement a School Readiness Integration Partnership that outlines the means by which the grantee will coordinate efforts, services, resources, program administration, and curriculum and instruction among local public-school prekindergarten programs, licensed child-care providers, and Head Start programs; (4) participate in the School Readiness Certification System, a valid, research-based automated system through which an early childhood education program submits an application demonstrating the program's record of cognitive, social, and emotional development of young children to be certified as a school ready program; and (5) design and develop a prekindergarten service program that is sustainable after the end of the Prekindergarten Early Start Grant Program, with sufficient funding from sources other than grant funds. In addition, recipients of Tier 3, Year 1, grant funds will be required to work with the state's technical assistance provider, the State Center for Early Childhood Development (SCECD). Grant recipients will be required to participate in intensive technical assistance provided by the SCECD, focused on proven school readiness components aligned with the Texas Prekindergarten Guidelines.

The goal of the Prekindergarten Early Start Grant Program is to expand the state's capacity to provide high-quality prekindergarten services to a greater number of eligible preschool students. The Prekindergarten Early Start Grant Program is designed to achieve this goal through its support of coordinated community partnerships that build on existing local resources to provide instructional services that help children reach their full potential as learners.

**Dates of Project.** The Prekindergarten Early Start Grant Program Tier 3, Year 1, will be implemented during the 2009-2010 school year. Applicants should plan for a starting date of no earlier than September 1, 2009, and an ending date of no later than August 31, 2010.

**Project Amount.** The Prekindergarten Early Start Grant Program Tier 3, Year 1, will be contingent upon funding being approved by the 81st Texas Legislature, 2009. Based upon appropriation in previous legislative sessions, it is anticipated that approximately \$30,725,014 will be available for funding Prekindergarten Early Start Grant Program Tier 3, Year 1, grants during the September 1, 2009, through August 31, 2010, project period. The number of projects funded will depend on the number of applicants for funding and the amount awarded to applicants selected for funding. Projected maximum grant amounts for all eligible applicants are included on the list of eligible applicants posted on the TEA Grant Opportunities webpage at <http://www.tea.state.tx.us/opge/disc/calendar/762-09/Prek-Tier3.pdf>. This project is funded 100 percent from state funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. 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://burlleson.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 Sarah Averill, 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://burlleson.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, February 19, 2009, to be eligible to be considered for funding.

TRD-200806329

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: December 3, 2008



## Request for Applications Concerning Dropout Recovery Pilot Program, Cycle 2

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-108. Texas school districts, open-enrollment charter schools, institutions of higher education, county departments of education, nonprofit organizations that have demonstrated the ability and capacity to provide educational programs to students in any grade from kindergarten through Grade 12, and education service centers (ESCs) within ESC regions 1, 4, 10, 11, 13, 19, or 20 are eligible to apply for grant funding. Eligible applicants must (1) have been in operation for at least three years; (2) have been granted a charter or received accreditation from an accrediting entity appropriate to and with authority over the applicant if issuing high school diplomas; and (3) be financially stable. Entities that received funding under the Dropout Recovery Pilot Program, Cycle 1, are not eligible for Cycle 2 funds.

**Description.** The Dropout Recovery Pilot Program, Cycle 2, is intended to offer students who have dropped out of public high school the opportunity to earn a high school diploma or demonstrate college readiness by certain defined means, as specified in the RFA. In order for a student to be considered an eligible participant in the Dropout Recovery Pilot Program, Cycle 2, the student must be 25 years of age or younger. In addition, one of the following conditions must apply: (1) the student must have been assigned by a Texas public secondary school a leaver code in the Public Education Information Management System (PEIMS) that corresponds to the definition of a dropout for that school year in which the student withdrew; or (2) the student was en-

rolled in a Texas public secondary school and during the current or last regular school year in which the student was enrolled, the student was not in attendance for at least 30 consecutive school days. Between this period of nonattendance and enrollment in the Dropout Recovery Pilot Program, Cycle 2, the student may not have been enrolled in any Texas public secondary school, private school, or home school; or (3) the student has a notarized affidavit from the student's parent or legal guardian, or from the student if he or she is over 18, declaring that the student has dropped out of a Texas public secondary school, as defined in condition (1) or (2), and is not currently enrolled in a Texas public school, private school, or home school.

Qualifying grantees will be required to conduct a needs assessment for each participating student and create a P-16 Individualized Graduation Plan for each student. Grantees must also develop a P-16 strategic plan detailing how they plan to address the dropout crisis in their service area and deficiencies identified in the collective needs assessments of potential students. Entities providing sectarian activities must provide assurance that the dropout recovery pilot program is nonsectarian and that no religious instruction will be provided in the program. Grantees will be required to comply with all TEA requirements.

**Dates of Project.** The Dropout Recovery Pilot Program, Cycle 2, will be implemented during the 2009-2010 school year. Applicants should plan for a starting date of no earlier than June 1, 2009, and an ending date of no later than August 31, 2010.

**Project Amount.** A base amount of no greater than \$150,000 will be made available to each grantee for the purpose of planning and establishing an appropriate infrastructure for the program. Each grantee will be eligible to receive (1) benchmark payments for each student who makes interim progress by meeting established benchmark standards toward achieving a high school diploma or demonstrating college readiness, and (2) completion payments for each student who completes the program by either attaining a high school diploma or demonstrating college readiness. Grantees not eligible to receive funding through the Foundation School Program are also eligible to receive an additional set amount per student for those students who achieve academic progress on the same assessment instrument administered upon initial enrollment in the program and at the end of each subsequent semester. The number of projects funded will depend on the number of eligible applicants that apply and the number of students they anticipate serving. Project funding in any subsequent period 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://burlleson.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 Donnell Bilsky, 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://burlleson.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, February 12, 2009, to be eligible to be considered for funding.

TRD-200806331

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: December 3, 2008

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 12, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 12, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cargill Meat Solutions Corporation; DOCKET NUMBER: 2008-1149-AIR-E; IDENTIFIER: RN101615839; LOCATION: Parmer County; TYPE OF FACILITY: meat packing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §122.145(2)(A) and §122.146(1), (2), and (5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the annual compliance certification; 30 TAC §§101.20(1), 116.115(b)(2)(E) and (c), and 122.143(4), Air Permit Number 40299, Special Condition (SC) Number 7, Federal Operating Permit (FOP) Number O-02613, General Terms and Conditions (GTC), 40 Code of Federal Regulations (CFR) §60.48c(g), and THSC, §382.085(b), by failing to properly record and document actual amounts of fuel used at the steam boilers; 30 TAC §122.145(2)(A) and §122.146(5) and THSC, §382.085(b), by failing to include all instances of deviations on the annual compliance certification; and 30 TAC §116.115(c), Air Permit Number 40299, SC Number 11(D)(2), and THSC, §382.085(b), by failing to calibrate the oxidation reduction potential meter on a monthly basis and by failing to clean it as necessary; PENALTY: \$19,294; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: ConocoPhillips Pipe Line Company; DOCKET NUMBER: 2008-1349-AIR-E; IDENTIFIER: RN100213495; LOCATION: Springlake, Lamb County; TYPE OF FACILITY: petroleum pump station; RULE VIOLATED: 30 TAC §106.512(2)(C)(iii) and §122.143(4), FOP Number O-2751, Special Terms and Conditions (STC) Number 4, and THSC, §382.085(b), by failing to conduct the 2005 biennial performance test on Engine 6/United E5; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-2755, GTC, and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: \$3,325; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: Eagle Rock Field Services, L.P.; DOCKET NUMBER: 2008-1019-AIR-E; IDENTIFIER: RN100225887 and RN102820313; LOCATION: Carson County; TYPE OF FACILITY: natural gas compressor stations; RULE VIOLATED: 30 TAC §106.512(2) and THSC, §382.085(b), by failing to comply with the nitrogen oxides (NO<sub>x</sub>) emission rate of two grams per horsepower hour; 30 TAC §122.146(2), FOP Number O-00475, GTC, and THSC, §382.085(b), by failing to timely submit the annual compliance certification; and 30 TAC §122.130 and THSC, §382.085(b), by failing to retain a Title V permit and continuing to operate a source of air emissions; PENALTY: \$8,241; Supplemental Environmental Project (SEP) offset amount of \$3,296 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso; DOCKET NUMBER: 2008-1319-PST-E; IDENTIFIER: RN102476041; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: car dealership; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended underground storage tank (UST) registration; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code,

§26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that the UST is monitored in a manner which will detect a release at a frequency of at least once every month; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the UST; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; PENALTY: \$21,017; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-0971-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Numbers 914 and 9176, SC Number 1, FOP Numbers O-02074 and O-02001, GTC, SC Numbers 15 and 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B), NSR Number 914, SC Number 8, FOP Number O-02001, GTC, SC Number 1, and THSC, §382.085(b), by failing to properly report an emissions event; PENALTY: \$8,634; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2008-1163-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 18287, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$30,000; SEP offset amount of \$12,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muenink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: FAIRWAY ENTERPRISES, INC. dba 1st Choice Food Store 1; DOCKET NUMBER: 2008-1245-PST-E; IDENTIFIER: RN102252590; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: \$4,100; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Four States Recycling, Inc.; DOCKET NUMBER: 2008-0596-MLM-E; IDENTIFIER: RN103204954; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: unauthorized municipal and industrial material recycling; RULE VIOLATED: 30 TAC §328.5(b) and §335.6(a), by failing to notify the executive director of

recycling operations for materials generated at municipal and industrial facilities and by failing to report to the executive director prior to the commencement of new recycling operations; 30 TAC §330.15(c), by failing to dispose of solid waste at an authorized facility; 30 TAC §328.5(f), by failing to maintain records necessary to show compliance with the requirements of 30 TAC §328.4, relating to limitations on storage of recyclable materials; 30 TAC §37.921 and §328.5(d) and (f)(3), by failing to obtain financial assurance for closure of the facility; and 30 TAC §328.5(h), by failing to maintain a fire prevention and suppression plan; PENALTY: \$6,115; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: Harris County Municipal Utility District Number 24; DOCKET NUMBER: 2008-1169-MWD-E; IDENTIFIER: RN101609089; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011988001, Permit Conditions 2.d, by failing to minimize or prevent any discharge or sludge disposal which has a reasonable likelihood of adversely affecting the environment; 30 TAC §305.125(1) and TPDES Permit Number WQ0011988001, Effluent Limitations and Monitoring Requirements Number 1, by failing to maintain compliance with permitted effluent limitations for ammonia nitrogen (NH<sub>3</sub>-N) and total suspended solids (TSS); 30 TAC §305.125(1) and TPDES Permit Number WQ0011988001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notifications for effluent violations more than 40% above the permitted limitation; and 30 TAC §305.125(17) and §319.7(c) and TPDES Permit Number WQ0011988001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports; PENALTY: \$25,270; SEP offset amount of \$20,216 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays 'N Bayous Trash Bash; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Houston Refining LP; DOCKET NUMBER: 2008-1454-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Numbers 2167 and PSD-TX-985, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2008-1055-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§117.4045(c), 117.4145(c), and 122.143(4), FOP Number O-01350, STC Number 1.A., FOP Number O-01868, STC Number 1.A., and THSC, §382.085(b), by failing to submit excess emission reports in a timely manner; 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(5)(C), FOP Number O-01350, GTC, FOP Number O-01868, GTC, FOP Number O-01996, GTC, and THSC, §382.085(b), by failing to report all deviations; 30 TAC §101.20(2) and §122.143(4), FOP Number O-01996, STC Numbers 1.a., 10.B., and 12.A., 40 CFR §61.342(c)(1)(iii) and §61.346(a)(1)(i)(A), and THSC, §382.085(b), by failing to conduct Method 21 monitoring; 30 TAC §101.20(2) and §122.143(4), FOP Number O-01996, STC Numbers 1.A., 10.B., and 11.A., 40 CFR §61.342(c)(1)(ii) and §61.345(a)(1)(i), and THSC, §382.085(b), by failing to conduct fugitive emission monitoring; 30 TAC §101.20(2) and §122.143(4), FOP Number O-01996, STC Numbers 1.A. and 10.K., 40 CFR §61.357(d)(8), and THSC,

§382.085(b), by failing to report failing to monitor 211 components in the benzene annual inspection report; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01897, GTC, STC Number 20, FOP Number O-02075, GTC and STC Number 10, NSR Permit Number 1302, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$32,082; SEP offset amount of \$12,833 applied to Texas Parent Teacher Association - Clean School Bus Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: City of Kerrville; DOCKET NUMBER: 2008-1373-MWD-E; IDENTIFIER: RN100844802; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010576001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for NH<sub>3</sub>-N, carbonaceous biochemical oxygen demand, and flow; PENALTY: \$12,300; SEP offset amount of \$9,840 applied to RC&D - Water or Wastewater Treatment; ENFORCEMENT COORDINATOR: Mark Oliver, (512) 239-3308; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: K-YOBA, INC. dba Jedco 21; DOCKET NUMBER: 2008-1276-PST-E; IDENTIFIER: RN101738979; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A) and the Code, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; PENALTY: \$7,922; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Lufkin Industries, Inc.; DOCKET NUMBER: 2008-1439-AIR-E; IDENTIFIER: RN100221613; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: foundry and kiln plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(5)(C) and (D), FOP Number O-1854, GTC, and THSC, §382.085(b), by failing to accurately certify the annual permit compliance certification; 30 TAC §116.115(c) and §122.143(4), FOP Number O-1854, STC Number 7, NSR Permit Number 6285, SC Number 25, and THSC, §382.085(b), by failing to maintain records of the monthly emission capture system inspections; and 30 TAC §122.143(4) and §122.145(2)(A) and (B), FOP Number O-1854, GTC, and THSC, §382.085(b), by failing to submit a semiannual deviation report; PENALTY: \$3,366; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: City of Moran; DOCKET NUMBER: 2008-1359-PWS-E; IDENTIFIER: RN101392181; LOCATION: Moran, Shackelford County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(1), by failing to provide a water purchase contract; PENALTY: \$110; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: ONE STOP FOOD STORES, INC. dba One Stop 43; DOCKET NUMBER: 2008-1191-PST-E; IDENTIFIER: RN102236296; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to install overfill prevention equipment on all tanks; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.72(3)(B), by failing to report a suspected release; 30 TAC §334.74, by failing to investigate a suspected release; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and that each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the VRS; 30 TAC §115.246(1) and (5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$58,975; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2008-1182-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Numbers 8838 and N61, SC Number 1, FOP Number O-02236, SC Number 13, and THSC, §382.085(b), by failing to operate within NOx emission hourly limits; PENALTY: \$9,575; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: SHREEDHAR CORPORATION INC. dba Phillips 66 Truck Stop; DOCKET NUMBER: 2008-1117-PST-E; IDENTIFIER: RN103045977; LOCATION: Slaton, Lubbock County; TYPE OF FACILITY: truck stop with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves were securely anchored at the base of the dispensers; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label,

or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; 30 TAC §334.48(a), by failing to prevent unauthorized discharges of gasoline and diesel fuel; and 30 TAC §334.77, by failing to perform initial abatement measures and site check; PENALTY: \$29,155; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: Silo Road Partners, Ltd.; DOCKET NUMBER: 2008-1105-WQ-E; IDENTIFIER: RN105538649; LOCATION: Farmersville, Collin County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: South Fort Worth RV Ranch, L.L.C.; DOCKET NUMBER: 2008-1285-MWD-E; IDENTIFIER: RN104813605; LOCATION: Johnson County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014680001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS, chlorine, and five-day biochemical oxygen demand; PENALTY: \$3,870; ENFORCEMENT COORDINATOR: Mark Oliver, (512) 239-3308; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Swea Gardens Estates Utility, Inc.; DOCKET NUMBER: 2008-1375-PWS-E; IDENTIFIER: RN101456457; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; and 30 TAC §290.41(c)(3)(B), by failing to extend the well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; PENALTY: \$210; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77703-1452, (713) 767-3500.

(22) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2008-1043-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a) and (c)(7), Permit Number 6825A/PSD-TX-49, SC Number 5A, and THSC, §382.085(b), by failing to prevent the release of unauthorized contaminants into the atmosphere; PENALTY: \$14,200; SEP offset amount of \$5,680 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5506; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: West Fraser, Inc. dba Henderson Lumber Mill; DOCKET NUMBER: 2008-1468-AIR-E; IDENTIFIER: RN102324191; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: lumber mill; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-2702, GTC, and THSC, §382.085(b), by failing to submit an annual compliance certification and the associated deviation report; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: XTO Energy Inc.; DOCKET NUMBER: 2008-1383-AIR-E; IDENTIFIER: RN100223437; LOCATION: Longview, Gregg

County; TYPE OF FACILITY: natural gas compression plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), General Operating Permit (GOP) Number O-0673/Oil and Gas GOP Number 512 Site-wide Requirements (b)(1) and (2), and THSC, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200806299  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: December 2, 2008



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 12, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 12, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Agustin Ramirez and Ruth Ramirez; DOCKET NUMBER: 2008-0694-MSW-E; TCEQ ID NUMBER: RN105470934; LOCATION: 21407 North Skinner Road, Edinburg, Hidalgo County; TYPE OF FACILITY: residential property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste on their site; PENALTY: \$1,000; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: G.P. Mullen and Janis Mullen; DOCKET NUMBER: 2007-0591-PST-E; TCEQ ID NUMBER: RN103046199; LOCATION: 3376 County Road 100, Hutto, Williamson County;

TYPE OF FACILITY: grocery store; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, two underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change; PENALTY: \$3,600; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Smith County Recycling, L.L.C. dba Dingler Road Recycling Center; DOCKET NUMBER: 2007-1518-MSW-E; TCEQ ID NUMBER: RN104443767; LOCATION: 12188 County Road 1114, Tyler, Smith County; TYPE OF FACILITY: wood recycling facility; RULES VIOLATED: 30 TAC §328.5(b)(4), by failing to provide updates or changes to information contained in the facility report within 90 days of the effective date of the change; 30 TAC §328.4(b)(3), by failing to recycle or transfer to a different site for recycling during each subsequent six-month period at least 50% by weight or volume of the material accumulated at the beginning of the period; 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan; and 30 TAC §37.921 and §328.5(d), by failing to establish and maintain financial assurance for closure of a recycling facility that stores combustible material outdoors; PENALTY: \$15,371; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200806305

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 2, 2008



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 12, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 12, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Deloris Petty dba Denton Estates Mobile Home Park; DOCKET NUMBER: 2005-0701-PWS-E; TCEQ ID NUMBER: RN101174894; LOCATION: north end of Cottonwood Lane, Denton County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.274(a) - (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with the compliance monitoring data to the TCEQ by July 1st of each year; 30 TAC §290.51(a)(3), by failing to pay Public Health Service fees for Fiscal Years 2003 - 2007 for TCEQ Account Number 9061016; 30 TAC §§290.109(c)(2)(A)(ii), 290.110, and 290.122(c)(2)(A), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis for the months of August - December 2004, and January - May 2005, and by failing to provide public notification for the failure to collect water samples for the months of August - December 2004, and January - May 2005; 30 TAC §290.46(q)(2), by failing to submit documentation showing that the Respondent followed the flow chart in 30 TAC §290.47(h), to determine if a boil water notification must be issued in the event of a loss of distribution system pressure prior to returning the facility to service after a water outage on September 26, 2006; 30 TAC §290.46(q)(2), by failing to operate the facility by a licensed operator who holds a class "D" or higher license; 30 TAC §290.46(f), (3)(A)(i), (ii) and (iv) - (vi), (B)(ii) and (vi), (D)(i) and (ii), and (E)(ii), by failing to keep on file and make available for commission review, the facility's operating records; 30 TAC §290.46(m)(1)(A), by failing to perform annual inspections of the facility's ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to perform annual inspections of the facility's pressure tank; 30 TAC §290.46(c)(1)(F), by failing to obtain a sanitary control easement for Well Numbers 1 and 2; 30 TAC §290.45(b)(1)(C)(i), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.46(n)(3), by failing to submit well completion data to the commission prior to placing the wells into service so that the wells may be evaluated and approved for public use; 30 TAC §290.42(l), by failing to compile and maintain an up-to-date plan operations manual for operator review and reference; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility; 30 TAC §290.43(c), by failing to provide a ground storage tank that meets American Water Works Association standards; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence for the wells and ground storage tank that can be locked during periods of darkness or when the facility is unattended; 30 TAC §290.43(d)(2), by failing to provide a release device on the pressure tank; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide ground storage tank capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii)

and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection; 30 TAC §290.41(c)(1)(A), by failing to locate Well Number 1 greater than 50 feet from a septic tank; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block around Well Numbers 1 and 2 that extends a minimum of three feet in all directions; 30 TAC §290.41(c)(3)(N), by failing to provide an operable flow meter on both Well Numbers 1 and 2, to measure production yields, and provide for the accumulation of water production data; 30 TAC §290.46(v), by failing to securely install the facility's electrical wiring in compliance with local or national electrical code; and 30 TAC §290.44(d)(4), by failing to provide metering devices at each service connection; PENALTY: \$22,844; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Elegant Craftworks, Inc. dba Allan Products; DOCKET NUMBER: 2007-1480-AIR-E; TCEQ ID NUMBER: RN100215342; LOCATION: 825 Shepherd Drive, Garland, Dallas County; TYPE OF FACILITY: wood product manufacturing plant; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §122.46(1) and (2), by failing to submit the required annual compliance certifications for the periods of April 1, 2005 - March 31, 2006, and April 1, 2006 - March 31, 2007; and TWC, §5.702 and 30 TAC §101.27(c)(1), by failing to pay outstanding Air Emission fees for Financial Administration Account Number 21006231; PENALTY: \$5,250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Gas2006 Partners, LP dba Hawk Cove Grocery; DOCKET NUMBER: 2007-1934-PST-E; TCEQ ID NUMBER: RN105354229; LOCATION: 1617 North Shore Road, Quinlan, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; TWC, §26.346 and 30 TAC §334.7(a)(1), by failing to register with the commission USTs in existence on or after September 1, 1987; TWC, §26.346 and 30 TAC §334.8(c)(4)(B), by failing to ensure that the USTs' registration and self-certification form is fully and accurately completed and submitted to the commission in a timely manner; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §334.6(b)(2), by failing to provide written notification to the commission at least 30 days prior to initiating the construction activities; and 30 TAC §334.45(e)(4)(B), by failing to include a minimum of two observation wells in a tank hole containing two tanks; PENALTY: \$19,900; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Joe F. Slater; DOCKET NUMBER: 2008-0634-LII-E; TCEQ ID NUMBER: RN104805023; LOCATION: 4304 Peak Road, Granbury, Hood County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251(a)(1), by failing to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$1,336; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Oakridge Custom Homes, Inc.; DOCKET NUMBER: 2008-0477-WQ-E; TCEQ ID NUMBER: RN10595679; LOCATION: 3909 South 42nd Street, Killeen, Bell County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and TWC, §26.121(a), by failing to prevent the unauthorized discharge of sediment and construction debris; PENALTY: \$6,300; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5486; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Randy Russell dba Oak Ridge Mobile Home Park; DOCKET NUMBER: 2008-0638-PWS-E; TCEQ ID NUMBER: RN102676277; LOCATION: 4719 Old Angleton Road - County Road 288, two miles north of Farm-to-Market Road 2004, near Angleton, Brazoria County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.110(e)(4), by failing to submit a Disinfectant Level Quarterly Operating Report to the commission each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.121(a) and (b), by failing to have a complete and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: \$1,010; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Red Rock Water Supply Corporation; DOCKET NUMBER: 2008-0836-PWS-E; TCEQ ID NUMBER: RN101451193; LOCATION: 1718 Bridle Bit Road, Flower Mound, Denton County; TYPE OF FACILITY: public water supply facility; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the CCR to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; and 30 TAC §290.51(a)(6), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 90610113 for Fiscal Years 2002 - 2008 to the TCEQ in a timely manner; PENALTY: \$624; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Sonntag Materials, Inc.; DOCKET NUMBER: 2008-0432-WR-E; TCEQ ID NUMBER: RN105388466; LOCATION: 6722 Rainey, Grandbury, Hood County; TYPE OF FACILITY: sand and gravel mining operation; RULES VIOLATED: 30 TAC §297.11 and



TWC, §11.121, by failing to obtain appropriate authorization prior to storing or diverting state water associated with its sand and gravel mining operation; PENALTY: \$1,875; STAFF ATTORNEY: James Salans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200806306

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 2, 2008



### Public Notice - Shutdown/Default Orders

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 12, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 12, 2009**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: David McBirmie dba Little Papas; DOCKET NUMBER: 2006-0322-PST-E; TCEQ ID NUMBER: RN102032901; LOCATION: 400 Van Horn Drive, Van Horn, Culberson County; TYPE

OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.51(b)(2)(B) and TWC, §26.3475(c)(2), by failing to provide proper spill containment equipment for the underground storage tank (UST) system; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and 30 TAC §334.10(b), by failing to maintain UST records and make immediately available for inspection upon request by the TCEQ investigator; PENALTY: \$6,405; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200806307

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 2, 2008



### Texas Health and Human Services Commission

#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is to comply with the Centers for Medicaid and Medicare Services (CMS) final rule published November 7, 2008, titled *Medicaid Program; Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition*. The final rule and the proposed amendment are effective December 8, 2008. This final rule further aligns the Medicaid definition of "outpatient services" to the Medicare definition. CMS stated in the preamble to the final rule that it "did not anticipate that the regulation defining what is covered as an outpatient hospital facility service will result in significant reductions in FFP for Medicaid service providers or place significant administrative burdens upon States." The fiscal impact of this rule to Texas Medicaid is uncertain at this time.

Interested parties may obtain copies of the proposed amendment by contacting Kevin Nolting, Director of Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1348; by facsimile at (512) 491-1998 or by e-mail at Kevin.Nolting@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200806322

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: December 3, 2008



#### Request for Public Comment

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) program caseload reduction credit for Federal Fiscal Year (FFY) 2009. HHSC will base the methodology on caseload reduction occurring from

FFY 2005 to FFY 2008. This methodology and the resulting estimated caseload reduction credit will be submitted to the U.S. Department of Health and Human Services, Administration for Children and Families, for approval.

Under §407(b)(3) of the Social Security Act and Title 45 of the Code of Federal Regulations, Part 261, Subpart D, any State wishing to receive a TANF caseload reduction credit must complete and submit a report. The caseload reduction credit gives a State credit for reducing its TANF caseload between a base year and a comparison year. The State must develop a methodology for determining the TANF caseload reduction credit, which will be used to calculate the estimate. The State must provide the public with an opportunity to comment on the estimate and methodology. As the State agency that administers the TANF program, HHSC has developed the estimate and methodology and is providing the public with an opportunity for comment.

The methodology and the estimated caseload reduction credit will be posted on the HHSC website at <http://www.hhsc.state.tx.us/research> by December 12, 2008. Written or electronic copies of the methodology and estimate also can be obtained by contacting Ross McDonald, HHSC Texas Works Reporting Team Lead, by telephone at (512) 424-6843.

The public comment period begins December 12, 2008, and ends December 26, 2008. Comments must be submitted in writing to Texas Health and Human Services Commission, Strategic Decision Support, Attention: Ross McDonald, MC 1950, P.O. Box 13247, Austin, Texas 78711-3247. Comments also may be submitted electronically to Ross McDonald at [ross.mcdonald@hhsc.state.tx.us](mailto:ross.mcdonald@hhsc.state.tx.us).

TRD-200806210

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: November 24, 2008

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Stearns Conrad Schmidt Consulting Engineering Inc.	L06209	Bedford	00	11/18/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	Columbia Medical Center of Arlington Subsidiary L.P. dba Medical Ctr. of Arlington	L02228	Arlington	67	11/14/08
Austin	PPD Development Inc. dba PPD Development	L04348	Austin	20	11/21/08
Austin	Tx Oncology P.A. dba Central Austin Cancer	L06090	Austin	01	11/21/08
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	102	11/12/08
Baytown	Edward W. Leahey, M.D., P.A.	L06014	Baytown	02	11/19/08
Bryan	St. Joseph Regional Health Center	L00573	Bryan	70	11/13/08
Cleburne	Numed Imaging Centers Inc.	L05762	Cleburne	09	11/18/08
College Station	BCS Heart L.L.P.	L04890	College Station	18	11/14/08
Corpus Christi	Equistar Chemicals L.P. Corpus Christi Plant	L02447	Corpus Christi	22	11/17/08
Dallas	Physician Reliance Network dba Tx Cancer Center at Medical City Dallas	L05534	Dallas	10	11/18/08
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	93	11/18/08
Deer Park	Shell Oil Products US dba Deer Park Refining Limited Partnership	L04554	Deer Park	25	11/13/08
Denton	Trace Life Sciences Inc	L05435	Denton	20	11/18/08
Farmers Branch	Gemclear L.P.	L06189	Farmers Branch	01	11/13/08
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	69	11/20/08
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	68	11/12/08
Grapevine	Cor Specialty Associates of North Texas P.A.	L05576	Grapevine	07	11/21/08
Harlingen	Texas Oncology P.A. dba South Texas Cancer Center Harlingen	L00154	Harlingen	36	11/18/08
Houston	Spectracell Laboratories Inc.	L04617	Houston	14	11/17/08
Houston	Woodlands-North Houston Cardiovascular Imaging Center	L04253	Houston	24	11/14/08
Houston	TH Healthcare Ltd. dba Park Plaza Hospital	L02071	Houston	57	11/14/08
Houston	Proportional Technologies Inc.	L04747	Houston	23	11/13/08
McKinney	Silk Imaging and Healthcare L.P. dba Silk Imaging and Healthcare	L06129	McKinney	02	11/17/08
Mount Pleasant	Luminant Generation Company L.L.C.	L04565	Mount Pleasant	15	11/21/08
Pasadena	The Dow Chemical Company Clear Lake Operations	L05829	Pasadena	07	11/13/08
Port Lavaca	Union Carbide Corporation A subsidiary of the Dow Chemical Company	L00051	Port Lavaca	91	11/18/08
Richardson	The University of Texas at Dallas	L02114	Richardson	56	11/19/08
San Antonio	Methodist Healthcare System of San Antonio dba Methodist Hospital	L00594	San Antonio	250	11/14/08
San Antonio	Texas Cancer Clinic	L05786	San Antonio	11	11/18/08
Sherman	Texas Oncology P.A. dba Texas Cancer Center Sherman	L05019	Sherman	19	11/17/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Sugarland	St. Lukes Sugarland Partnership L.L.P. dba St. Lukes Sugarland Hospital	L06180	Sugarland	01	11/21/08
Texas City	Ineos Nova L.L.C.	L00354	Texas City	37	11/18/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	17	11/19/08
Throughout Tx	J-W Wireline Company	L06132	Addison	08	11/18/08
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	197	11/13/08
Throughout Tx	Cornerstone Testing and Engineering Inc.	L04725	Amarillo	08	11/13/08
Throughout Tx	Global X-Ray and Testing Corporation	L03663	Aransas Pass	108	11/18/08
Throughout Tx	Price Construction Ltd.	L05205	Big Spring	05	11/18/08
Throughout Tx	Texas A&M University Environmental Health and Safety Department	L05683	College Station	08	11/17/08
Throughout Tx	N-Spec Quality Services Inc.	L05113	Corpus Christi	33	11/13/08
Throughout Tx	Shared PET Imaging Inc.	L06124	Dallas	02	11/13/08
Throughout Tx	Reynolds Asphalt and Construction Company	L05004	Eules	07	11/12/08
Throughout Tx	Gray Wireline Service Inc.	L03541	Fort Worth	30	11/19/08
Throughout Tx	Numed Imaging Centers Inc.	L05016	Grapevine	19	11/21/08
Throughout Tx	Thrubit L.L.C.	L06030	Houston	07	11/12/08
Throughout Tx	Weavexx Corporation	L05834	Houston	02	11/14/08
Throughout Tx	Positron Corporation	L03806	Houston	30	11/18/08
Throughout Tx	Nuclear Imaging Services	L05775	Houston	46	11/21/08
Throughout Tx	Arts Inspection and Pipe Service	L04735	Odessa	07	11/14/08
Throughout Tx	Conam Inspection and Engineering Inc.	L05010	Pasadena	157	11/17/08
Throughout Tx	Conam Inspection and Engineering Inc.	L05010	Pasadena	158	11/20/08
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugarland	108	11/18/08
Throughout Tx	Wren Oilfield Services Incorporated	L04690	White Oak	09	11/19/08
Tomball	Arvind M Pai M.D. P.A.	L06008	Tomball	03	11/18/08
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	41	11/18/08
Weslaco	Knapp Medical Center	L03290	Weslaco	45	11/19/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Cardinal Health	L02117	Austin	84	11/17/08
Houston	Kelsey Seybold Clinic P.A.	L00391	Houston	64	11/21/08
Tyler	East Texas Medical Center	L00977	Tyler	142	11/17/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Beaumont	Reuben A. Isern M.D.	L04516	Beaumont	09	11/19/08
Georgetown	St. David's Georgetown Hospital	L03152	Georgetown	41	11/12/08
Georgetown	St. David's Georgetown Hospital	L06152	Georgetown	41	11/12/08
Lubbock	W Chuck Brogan III, M.D., Ph.D., P.A. dba Brogan Heart Center	L05488	Lubbock	08	11/21/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200806323  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: December 3, 2008

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## Texas Department of Insurance

### Third Party Administrator Application

The following third party administrator (TPA) application have been filed with the Texas Department of Insurance and are under consideration.

Application of TCGT AGENCY, INC., a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200806317  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: December 3, 2008

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## Legislative Budget Board

### Request for Qualifications

The Legislative Budget Board (LBB) announces the issuance of a Request for Qualifications (RFQ # LBB 2008 PR 1002) to pre-qualify vendors to assist the LBB in conducting a variety of reviews, evaluations, and analyses of educational, financial, and operational functions of selected Texas School and Community College Districts.

**Contact:** The contact person for this RFQ is Bill Parr, Assistant Director, Legislative Budget Board, Robert E. Johnson Building, 5th Floor, 1501 N. Congress, Austin, Texas 78701, telephone number: (512) 463-1200; fax number: (512) 475-2902; email address: bill.parr@lbb.state.tx.us. The complete RFQ is available electronically on the Texas Marketplace at: <http://esbd.cpa.state.tx.us> and on the LBB website at <http://www.lbb.state.tx.us>.

**Questions:** All questions regarding the RFQ must be sent via fax to (512) 475-2902, or sent by email to [contract.manager@lbb.state.tx.us](mailto:contract.manager@lbb.state.tx.us) not later than 2:00 p.m. C.Z.T., on December 15, 2008. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than December 19, 2008 or as soon thereafter as practical.

**Closing Date:** Applications must be received in the issuing office at the address specified above no later than 2:00 p.m. C.Z.T., on January 8, 2009. Applications received after this time and date will not be considered. Applicants shall be solely responsible for confirming the timely receipt of applications.

**Application Evaluation and Approval Process:** All applications will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFQ. The LBB will make the final decision regarding the pre-qualification of all applicants. The LBB reserves the right to reject any or all submitted applications.

The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of this RFQ. The LBB shall not pay for any costs incurred by any applicant in responding to this Notice or this RFQ.

### The anticipated schedule of events is as follows:

Issuance of RFQ - November 26, 2008, after 10:00 a.m. C.Z.T.;

Questions Due - December 15, 2008, 2:00 p.m. C.Z.T.;

Official Responses to Questions Posted - December 19, 2008, or as soon thereafter as practical;

Applications Due - January 8, 2008 2:00 p.m. C.Z.T.;

Oral Presentations - January 12 - January 23, 2009;

Approval of Pre-qualified Applicants - January 30, 2009, or as soon thereafter as practical.

TRD-200806220  
Bill Parr  
Assistant Director  
Legislative Budget Board  
Filed: November 26, 2008

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## Texas Lottery Commission

### Instant Game Number 1170 "8 Seconds Lucky"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1170 is "8 SECONDS LUCKY." The play style is "key number match with auto win."

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1170 shall be \$2.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1170.

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, 8 SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$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. 1170 - 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
8 SYMBOL	EGT
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO 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 and \$200.

H. High-Tier Prize - A prize of \$2,000 and \$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 (1170), 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: 1170-0000001-001.

K. Pack - A pack of "8 SECONDS LUCKY" 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 "8 SECONDS LUCKY" Instant Game No. 1170 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 "8 SECONDS LUCKY" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches either of the WINNING TIMES play symbols to any of YOUR TIMES play symbols, the player wins the PRIZE shown for that time. If a player reveals an "8" play symbol in any of YOUR TIMES, the player wins PRIZE shown for that time 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 22 (twenty-two) 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 22 (twenty-two) 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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) 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 "8" (auto win) play symbol will only appear once on intended winning tickets.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING TIMES play symbols on a ticket.

E. No duplicate non-winning YOUR TIMES play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR TIMES play symbol (i.e. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "8 SECONDS LUCKY" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 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 \$50.00 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 "8 SECONDS LUCKY" 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 "8 SECONDS LUCKY" 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 "8 SECONDS LUCKY" 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 "8 SECONDS LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1170. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1170 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	643,200	12.50
\$4	739,680	10.87
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	41,406	194.17
\$200	6,499	1,237.11
\$2,000	31	259,354.84
\$20,000	10	804,000.00

\*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 4.76. 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. 1170 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. 1170, 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-200806221  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: November 26, 2008

**Public Utility Commission of Texas**

**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on November 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cable One, Inc. to Amend a State-Issued Certificate of Franchise Authority, Project Number 36423 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City of Whitewright, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36423.

TRD-200806301  
 Adriana A. Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: December 2, 2008

**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on November 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of GTE Southwest, Incorporated d/b/a Verizon Southwest for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36438 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the city and surrounding area of Justin, the city of Northlake, and the city of Corral City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36438.

TRD-200806302  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2008

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**Notice of Application for Amendment to Certificated Service Area Boundary**

Notice is given to the public of an application filed on November 24, 2008, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Kenberg Exchange and the Boerne Exchange of Verizon. Docket Number 36430.

The Application: The minor boundary amendment is being filed to amend the service area boundary between the Kenberg exchange of Guadalupe Valley Telephone Cooperative, Inc. (GVTC) and the Boerne exchange of Verizon Southwest. This realignment will allow for a more efficient facilities design for both GVTC and Verizon Southwest, and allow for all future customers in a proposed subdivision to be served by a single provider. Verizon Southwest has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 19, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36430.

TRD-200806313  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2008

◆ ◆ ◆  
**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 on November 26, 2008, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.419, respectively.

Docket Title and Number: Application of GTC Global Telecom, Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 36448.

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) and P.U.C. Substantive Rule §26.417, 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. GTC Global Telecom, Inc. seeks ETC designation in the entire service area of Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas), and ETP designation in certain exchanges/wire centers in which AT&T Texas is the incumbent provider.

The Company holds Service Provider Certificate of Operating Authority Number 60788.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by December 29, 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 (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36448.

TRD-200806315  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2008

◆ ◆ ◆  
**Notice of Application to Amend Certificated Service Area Boundaries in Travis County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 25, 2008, for an amendment to certificated service area boundaries within Travis County, Texas.

Docket Style and Number: Joint Application of Pedernales Electric Cooperative and the City of Austin d/b/a Austin Energy to amend a Certificate of Convenience and Necessity for Service Area Boundaries within Travis County. Docket Number 36441.

The Application: The proposed boundary change is for release of territory from Pedernales Electric Cooperative to Austin Energy so that Austin Energy can serve a new water treatment plant, WTP#4, a city-owned facility located on city-owned land. Austin Energy does not propose to serve additional customers from the proposed substation because its capacity will be reserved for the WTP#4 load. There are currently no consumers in the affected areas of the proposed boundary change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than December 19, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36441.

TRD-200806314  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2008

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**Teacher Retirement System of Texas**

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register*

ter no later than December 15th of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1st of each year containing the balance sheet as of August 31st of the preceding school

year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by §825.108(a) and (b) of the Government Code:

Exhibit  
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## Statement of Fiduciary Net Assets

AUGUST 31, 2008

(With Comparative Totals for Pension and Other Employee Benefit Trust Funds for August 31, 2007)

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>ASSETS</b>		
<b>Cash:</b>		
Cash in State Treasury	\$ 746,823,214	\$ 256,965,468
Cash in Bank	199,793,684	
Cash on Hand	3,357,882	342
<b>TOTAL CASH</b>	<b>\$ 949,974,780</b>	<b>\$ 256,965,810</b>
<b>Receivables:</b>		
Sale of Investments	\$ 63,134,327	\$
Interest and Dividends	319,128,326	1,837,370
Member and Retiree Reporting Entities	73,185,429	37,018,624
Other	40,368,192	7,558,944
Due from State's General Fund	383,765	10,116,595
Due from Employees Retirement System of Texas	106,418,565	24,317,727
	733,184	
<b>TOTAL RECEIVABLES</b>	<b>\$ 603,351,788</b>	<b>\$ 80,849,260</b>
<b>Investments:</b>		
Short-Term	\$ 16,859,539,955	\$ 514,883,913
Equities	50,917,099,622	
Fixed Income	20,619,077,668	
Alternative Investments	15,118,758,132	
Derivative Investments	(415,383,006)	
Pooled Investments	975,618,115	
<b>TOTAL INVESTMENTS</b>	<b>\$ 104,074,710,486</b>	<b>\$ 514,883,913</b>
Invested Securities Lending Collateral	\$ 19,347,275,331	\$
<b>Capital Assets:</b>		
Land	\$ 1,658,310	\$
Building, Capital Projects and Equipment, at Cost, Net of Accumulated Depreciation	26,297,396	
<b>TOTAL CAPITAL ASSETS</b>	<b>\$ 27,955,706</b>	<b>\$ -0-</b>
<b>TOTAL ASSETS</b>	<b>\$ 125,003,268,091</b>	<b>\$ 852,698,983</b>

FIDUCIARY FUND  
TYPES

**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

2008	2007	Agency Funds
\$ 1,003,788,682	\$ 872,793,213	\$ 675
199,793,684	185,569,622	
3,358,224	3,128,352	
<hr/>	<hr/>	<hr/>
\$ 1,206,940,590	\$ 1,061,491,187	\$ 675
<hr/>	<hr/>	<hr/>
\$ 63,134,327	\$ 57,001,840	\$
320,965,696	451,566,512	
110,204,053	95,886,271	
47,927,136	24,237,520	
10,500,360	10,265,576	
130,736,292	90,675,576	
733,184	686,833	
<hr/>	<hr/>	<hr/>
\$ 684,201,048	\$ 730,320,128	\$ -0-
<hr/>	<hr/>	<hr/>
\$ 17,374,423,868	\$ 2,177,629,327	\$
50,917,099,622	70,255,220,452	
20,619,077,668	31,358,468,837	
15,118,758,132	7,824,404,404	
(415,383,006)		
975,618,115		
<hr/>	<hr/>	<hr/>
\$104,589,594,399	\$111,615,723,020	\$ -0-
<hr/>	<hr/>	<hr/>
\$19,347,275,331	\$ 23,114,634,985	\$
<hr/>	<hr/>	<hr/>
\$ 1,658,310	\$ 1,658,310	\$
<hr/>	<hr/>	<hr/>
26,297,396	27,523,958	
<hr/>	<hr/>	<hr/>
\$ 27,955,706	\$ 29,182,268	\$ -0-
<hr/>	<hr/>	<hr/>
\$125,855,967,074	\$136,551,351,588	\$ 675

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# Statement of Fiduciary Net Assets

AUGUST 31, 2008

(With Comparative Totals for Pension and Other Employee Benefit Trust Funds for August 31, 2007)

(concluded)

Exhibit  
1

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>LIABILITIES</b>		
Accounts Payable	\$ 4,368,249	\$ 393,072
Accounts Payable-State's General Fund		
Accounts Payable-External Manager Fees	1,374,018	
Benefits Payable	520,209,568	
Health Care Claims Payable		123,324,862
Reinstatement Installment Receipts	28,152,145	
Investments Purchased Payable	182,710,162	
Securities Lending Collateral	19,347,275,331	
Due to Employees Retirement System of Texas	4,531,950	
Compensable Absences Payable	4,149,123	141,724
Funds Held for Others		
<b>TOTAL LIABILITIES</b>	<b>\$ 20,092,770,546</b>	<b>\$ 123,859,658</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST- EMPLOYMENT BENEFITS</b>	<b>\$ 104,910,497,545</b>	<b>\$ 728,839,325</b>

FIDUCIARY FUND  
TYPES

**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

2008	2007	Agency Funds
\$ 4,761,321	\$ 5,242,033	\$
	3,227	
1,374,018		
520,209,568	482,492,677	
123,324,862	114,900,819	
28,152,145	31,527,265	
182,710,162	43,358,581	
19,347,275,331	23,114,634,985	
4,531,950	4,207,017	
4,290,847	3,388,207	
		675
<b>\$ 20,216,630,204</b>	<b>\$ 23,799,754,811</b>	<b>\$ 675</b>
<b>\$105,639,336,870</b>	<b>\$ 112,751,596,777</b>	<b>\$ -0-</b>

# Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

Exhibit  
II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>ADDITIONS:</b>		
<b>Contributions:</b>		
Member	\$ 1,998,138,487	\$ 165,569,413
State - General Fund	1,451,028,429	234,039,561
State - Federal Funds/Private Grants	251,413,125	20,682,613
Reporting Entities	353,524,480	141,672,630
Health Care Premiums		328,505,433
<b>TOTAL CONTRIBUTIONS AND PREMIUMS</b>	<b>\$ 4,054,104,521</b>	<b>\$ 890,469,650</b>
<b>Investment Income:</b>		
From Investing Activities:		
Net Appreciation (Depreciation) in Fair Value of Investments	\$ (7,992,472,030)	\$
Interest	1,805,993,518	29,252,347
Dividends	1,397,529,103	
<b>TOTAL INVESTING ACTIVITIES INCOME (LOSS)</b>	<b>\$ (4,788,949,409)</b>	<b>\$ 29,252,347</b>
Less: Internal Investing Activity Expenses	(27,956,132)	
<b>NET INCOME (LOSS) FROM INVESTING ACTIVITIES</b>	<b>\$ (4,816,905,541)</b>	<b>\$ 29,252,347</b>
From Securities Lending Activities:		
Securities Lending Income	\$ 929,696,098	\$
Securities Lending Expenses:		
Borrower Rebates	(682,745,643)	
Management Fees	(33,642,743)	
Net Income from Securities Lending Activities	\$ 213,307,712	\$ -0-
<b>TOTAL NET INVESTMENT INCOME (LOSS)</b>	<b>\$ (4,603,597,829)</b>	<b>\$ 29,252,347</b>
<b>Other Additions:</b>		
Reinstatement of Contribution Refunds	\$ 44,045,625	\$
Reinstatement Fees	43,161,749	
Legislative Appropriations (Lapsed) for Supplemental Compensation		
Legislative Appropriations for Excess Benefits	1,646,494	
Miscellaneous Revenues	3,596	
On Behalf Fringe Benefits Paid by the Federal Government		59,486,239
On Behalf Fringe Benefits Paid by the State		91,945
<b>TOTAL OTHER ADDITIONS</b>	<b>\$ 88,857,464</b>	<b>\$ 59,578,184</b>
<b>TOTAL ADDITIONS</b>	<b>\$ (460,635,844)</b>	<b>\$ 979,300,181</b>

**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

2008	2007
\$ 2,163,707,900	\$ 2,017,419,833
1,685,067,990	1,709,322,078
272,095,738	
495,197,110	418,086,225
328,505,433	323,957,945
<u>\$ 4,944,574,171</u>	<u>\$ 4,468,786,081</u>
\$ (7,992,472,030)	\$ 11,232,429,170
1,835,245,865	1,662,237,860
1,397,529,103	1,413,189,832
<u>\$ (4,759,697,062)</u>	<u>\$ 14,307,856,862</u>
(27,956,132)	(20,942,402)
<u>\$ (4,787,653,194)</u>	<u>\$ 14,286,914,460</u>
\$ 929,696,098	\$ 871,885,933
(682,745,643)	(820,326,962)
(33,642,743)	(7,255,314)
<u>\$ 213,307,712</u>	<u>\$ 44,303,657</u>
\$ (4,574,345,482)	\$ 14,331,218,117
\$ 44,045,625	\$ 45,003,113
43,161,749	41,494,298
	(455)
1,646,494	1,453,605
3,596	5,405
59,486,239	52,329,617
91,945	55,932
<u>\$ 148,435,648</u>	<u>\$ 140,341,515</u>
<u>\$ 518,664,337</u>	<u>\$ 18,940,345,713</u>

(to next page)



## Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)  
(concluded)

Exhibit  
II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>DEDUCTIONS:</b>		
Benefits	\$ 6,453,040,955	\$
Refunds of Contributions	275,482,331	
Health Care Claims		833,509,538
Health Care Claims Processing Administrative Expenses, Net of		36,747,710
Internal Investing Activity Expenses	26,122,662	3,000,536
External Manager Fees	1,374,018	
Supplemental Health Care Compensation		
Excess Benefits	1,646,494	
<b>TOTAL DEDUCTIONS</b>	<b>\$ 6,757,666,460</b>	<b>\$ 873,257,784</b>
<b>Net Increase (Decrease)</b>	<b>\$ (7,218,302,304)</b>	<b>\$ 106,042,397</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST- EMPLOYMENT BENEFITS - BEGINNING OF YEAR</b>	<b>\$112,128,799,849</b>	<b>\$ 622,796,928</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST- EMPLOYMENT BENEFITS - END OF YEAR</b>	<b>\$104,910,497,545</b>	<b>\$ 728,839,325</b>

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**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

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<b>2008</b>	<b>2007</b>
\$ 6,453,040,955	\$ 5,805,583,173
275,482,331	277,932,219
833,509,538	742,293,147
36,747,710	33,407,937
29,123,198	30,028,465
1,374,018	
	(455)
1,646,494	1,453,605
<u>\$ 7,630,924,244</u>	<u>\$ 6,890,698,091</u>
\$ (7,112,259,907)	\$ 12,049,647,622
<u>\$112,751,596,777</u>	<u>\$100,701,949,155</u>
<u>\$105,639,336,870</u>	<u>\$112,751,596,777</u>

# Statement of Net Assets

PROPRIETARY FUND

AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

Exhibit  
III

	TRS-ActiveCare Enterprise Fund	
	2008	2007
<b>ASSETS</b>		
<b>Current Assets:</b>		
<b>Cash:</b>		
Cash in State Treasury	\$ 115,581,881	\$ 85,476,716
<b>TOTAL CASH</b>	<b>\$ 115,581,881</b>	<b>\$ 85,476,716</b>
<b>Accounts Receivable:</b>		
Investment Interest	\$ 1,265,405	\$ 2,280,305
Health Care Premiums	49,961,692	38,911,959
<b>TOTAL ACCOUNTS RECEIVABLE</b>	<b>\$ 51,227,097</b>	<b>\$ 41,192,264</b>
<b>Short-Term Investments</b>	<b>\$ 428,523,342</b>	<b>\$ 411,892,046</b>
<b>TOTAL ASSETS</b>	<b>\$ 595,332,320</b>	<b>\$ 538,561,026</b>
<b>LIABILITIES</b>		
<b>Current Liabilities:</b>		
Accounts Payable	\$ 172,024	\$ 340,078
Premiums Payable to HMOs	5,552,472	4,790,124
Health Care Claims Payable	113,019,499	98,044,935
Compensable Absences Payable	117,701	90,826
<b>TOTAL LIABILITIES</b>	<b>\$ 118,861,696</b>	<b>\$ 103,265,963</b>
<b>NET ASSETS</b>		
Unrestricted	\$ 476,470,624	\$ 435,295,063
<b>TOTAL NET ASSETS</b>	<b>\$ 476,470,624</b>	<b>\$ 435,295,063</b>

# Statement of Revenues, Expenses, and Changes in Fund Net Assets

PROPRIETARY FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

Exhibit  
IV

	TRS-ActiveCare Enterprise Fund	
	2008	2007
<b>OPERATING REVENUES:</b>		
Health Care Premiums	\$ 1,096,537,022	\$ 939,694,028
Administrative Fees	186,844	184,937
<b>TOTAL OPERATING REVENUES</b>	<b>\$ 1,096,723,866</b>	<b>\$ 939,878,965</b>
<b>OPERATING EXPENSES:</b>		
Health Care Claims	\$ 952,156,339	\$ 801,148,962
Health Care Claims Processing	54,583,499	48,177,777
Premium Payments to HMOs	68,204,743	58,742,363
Administrative Expenses	1,830,258	1,775,831
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 1,076,774,839</b>	<b>\$ 909,844,933</b>
<b>OPERATING INCOME</b>	<b>\$ 19,949,027</b>	<b>\$ 30,034,032</b>
<b>NONOPERATING REVENUES:</b>		
Investment Income	\$ 21,164,640	\$ 26,016,380
On Behalf Fringe Benefits Paid by the State	61,894	46,446
<b>TOTAL NONOPERATING REVENUES</b>	<b>\$ 21,226,534</b>	<b>\$ 26,062,826</b>
<b>Change in Net Assets</b>	<b>\$ 41,175,561</b>	<b>\$ 56,096,858</b>
<b>TOTAL NET ASSETS - BEGINNING</b>	<b>\$ 435,295,063</b>	<b>\$ 379,198,205</b>
<b>TOTAL NET ASSETS - ENDING</b>	<b>\$ 476,470,624</b>	<b>\$ 435,295,063</b>

# Statement of Cash Flows

PROPRIETARY FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

Exhibit  
V

	TRS-ActiveCare Enterprise Fund	
	2008	2007
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Receipts from Health Care Premiums	\$ 1,085,380,356	\$ 933,730,270
Receipts from Long-Term Care Administrative Fees	186,844	184,937
Payments for Administrative Expenses	(1,802,609)	(1,671,075)
Payments for Health Care Claims	(937,231,469)	(792,092,412)
Payments for Health Care Claims Processing	(54,533,806)	(48,168,348)
Payments for HMO Premiums	(67,442,395)	(57,990,492)
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>\$ 24,556,921</b>	<b>\$ 33,992,880</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Interest Received	\$ 22,179,540	\$ 25,670,043
<b>NET CASH PROVIDED BY INVESTING ACTIVITIES</b>	<b>\$ 22,179,540</b>	<b>\$ 25,670,043</b>
Net Increase in Cash	\$ 46,736,461	\$ 59,662,923
<b>CASH AND CASH EQUIVALENTS - SEPTEMBER 1</b>	<b>\$ 497,368,762</b>	<b>\$ 437,705,839</b>
<b>CASH AND CASH EQUIVALENTS - AUGUST 31</b>	<b>\$ 544,105,223</b>	<b>\$ 497,368,762</b>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES</b>		
Operating Income	\$ 19,949,027	\$ 30,034,032
Adjustments to Reconcile Operating Income to Net Cash Provided (Used) by Operating Activities:		
(Increase) in Health Care Premiums Receivable	\$ (11,049,733)	\$ (5,820,879)
Increase in Premiums Payable to HMOs	762,348	751,871
Increase in Health Care Claims Payable	14,974,564	9,065,980
(Decrease) in Accounts Payable	(168,054)	(95,172)
Increase in Compensable Absences Payable	26,875	10,602
On Behalf Fringe Benefits Paid by the State	61,894	46,446
<b>Total Adjustments</b>	<b>\$ 4,607,894</b>	<b>\$ 3,958,848</b>
<b>Net Cash Provided by Operating Activities</b>	<b>\$ 24,556,921</b>	<b>\$ 33,992,880</b>

# Balance Sheet

GOVERNMENTAL FUNDS

AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

Exhibit  
VI

	School Employee Children's Health Insurance Program *	403 (b) Certification Program	Total Special Revenue Funds	
			2008	2007
<b>ASSETS</b>				
Current Assets:				
Cash in State Treasury	\$	\$ 434,586	\$ 434,586	\$ 383,016
Cash on Hand				3,000
Accounts Receivable		1,116	1,116	4,349
<b>TOTAL ASSETS</b>	<b>\$ -0-</b>	<b>\$ 435,702</b>	<b>\$ 435,702</b>	<b>\$ 390,365</b>
<b>LIABILITIES AND FUND BALANCE</b>				
Liabilities				
Current Liabilities:				
Accounts Payable	\$	\$ 16,000	\$ 16,000	\$ 8,000
Fund Balance Reserved for:				
Administrative Expenditures	\$	\$ 419,702	\$ 419,702	\$ 382,365
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>\$ -0-</b>	<b>\$ 435,702</b>	<b>\$ 435,702</b>	<b>\$ 390,365</b>

\* The interagency contract with the Health and Human Services Commission (HHSC) for the Children's Health Insurance Program became effective September 1, 2007. Legislative appropriations were received by TRS in fiscal year 2008 and transferred to HHSC in September 2007.

# Statement of Revenues, Expenditures, and Changes in Fund Balance

GOVERNMENTAL FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

Exhibit  
VII

	School Employee Children's Health Insurance Program *	403 (b) Certification Program	Total Special Revenue Funds	
			2008	2007
<b>REVENUES:</b>				
Certification Fees	\$	\$ 30,000	\$ 30,000	\$ 171,000
Product Registration Fees		180,000	180,000	
Investment Income		19,337	19,337	12,070
Legislative Appropriations	13,120,309		13,120,309	
<b>TOTAL REVENUES</b>	<b>\$ 13,120,309</b>	<b>\$ 229,337</b>	<b>\$ 13,349,646</b>	<b>\$ 183,070</b>
<b>EXPENDITURES:</b>				
Administrative Expenditures	\$	\$ 192,000	\$ 192,000	\$ 24,000
<b>TOTAL EXPENDITURES</b>	<b>\$ -0-</b>	<b>\$ 192,000</b>	<b>\$ 192,000</b>	<b>\$ 24,000</b>
Excess of Revenues Over Expenditures	\$ 13,120,309	\$ 37,337	\$ 13,157,646	\$ 159,070
<b>OTHER FINANCING SOURCES (USES):</b>				
Transfer Out to HHSC	\$ (13,120,309)	\$	\$ (13,120,309)	\$
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<b>\$ (13,120,309)</b>	<b>\$ -0-</b>	<b>\$ (13,120,309)</b>	<b>\$ -0-</b>
<b>FUND BALANCE - BEGINNING</b>	<b>\$ -0-</b>	<b>\$ 382,365</b>	<b>\$ 382,365</b>	<b>\$ 223,295</b>
<b>FUND BALANCE - ENDING</b>	<b>\$ -0-</b>	<b>\$ 419,702</b>	<b>\$ 419,702</b>	<b>\$ 382,365</b>

\* The interagency contract with the Health and Human Services Commission (HHSC) for the Children's Health Insurance Program became effective September 1, 2007. Legislative appropriations were received by TRS in fiscal year 2008 and transferred to HHSC in September 2007.

# Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2008

Exhibit  
A

	Balances September 1, 2007	Additions	Deductions	Balances August 31, 2008
<b>UNAPPROPRIATED RECEIPTS *</b>				
<b>Collections on Behalf of the State's General Fund</b>				
<b>Assets:</b>				
Cash in State Treasury	\$	\$ 15,003,571	\$ 15,003,571	\$
Accounts Receivable - Reporting Entities	14,826,176		14,826,176	
<b>TOTAL ASSETS</b>	<b>\$ 14,826,176</b>	<b>\$ 15,003,571</b>	<b>\$ 29,829,747</b>	<b>\$ -0-</b>
<b>Liabilities:</b>				
Accounts Payable - State's General Fund	\$ 14,826,176	\$	\$ 14,826,176	\$ -0-

## OTHER AGENCY FUNDS

**Employees' Savings  
Bond Account**

<b>Assets:</b>				
Cash in State Treasury	\$ 725	\$ 7,825	\$ 7,875	\$ 675
<b>Liabilities:</b>				
Funds Held for Others	\$ 725	\$ 7,800	\$ 7,850	\$ 675

## TOTALS - ALL AGENCY FUNDS

(Exhibit I)

<b>Assets:</b>				
Cash in State Treasury	\$ 725	\$ 15,011,396	\$ 15,011,446	\$ 675
Accounts Receivable - Reporting Entities	14,826,176		14,826,176	
<b>TOTAL ASSETS</b>	<b>\$ 14,826,901</b>	<b>\$ 15,011,396</b>	<b>\$ 29,837,622</b>	<b>\$ 675</b>
<b>Liabilities:</b>				
Accounts Payable - State's General Fund	\$ 14,826,176	\$	\$ 14,826,176	\$
Funds Held for Others	725	7,800	7,850	675
<b>TOTAL LIABILITIES</b>	<b>\$ 14,826,901</b>	<b>\$ 7,800</b>	<b>\$ 14,834,026</b>	<b>\$ 675</b>

*\*House Bill 2358 passed by the 80th Legislature requires these funds to be deposited directly into the Pension Trust Fund's state contribution account.*



## Rate of Return on Assets

YEAR ENDED AUGUST 31, 2008

---

Exhibit  
B

	Pension Trust Fund	Health Benefits Plans and 403(b) Program
<b>Cash and Short-Term Investments *</b>	4.39%	4.08%
<b>Long-Term Investments **</b>		
Global Equities	-9.88%	
Stable Value ***	1.17%	
Real Return	9.09%	

\* The rate of return for the Pension Trust Fund was included in Stable Value in the Annual Investment Performance Report for fiscal year ended August 31, 2008.

\*\* These asset allocation investment categories are based on the portfolio that the underlying securities are invested in. The portfolios are determined by and subject to the system's investment policy guidelines. Rates for Long-Term Investments include appreciation in market value.

\*\*\* Does not include Global Inflation Linked Bonds in Real Return Portfolio.



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October 27, 2008

## **BOARD OF TRUSTEES**

Teacher Retirement System of Texas  
1000 Red River Street  
Austin, TX 78701-2698

### **Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2008**

We certify that the information included herein and contained in the 2008 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2008.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Carter and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

#### ***Actuarial Valuations***

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

#### ***Financing Objective of the Plan***

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law and are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

#### ***Progress Toward Realization of Financing Objective***

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2008, the System's under-funded status has decreased to \$11.5 billion from \$12.5 billion as of August 31, 2007. This decrease in the UAAL is due to gains on both the actuarial value of assets and the actuarial liabilities of the System. The gain on the actuarial value of assets was due to the continued recognition of deferred investment gains from fiscal years 2004-2007. Recognition of these deferred gains more than offset the partial recognition of the investment income shortfall from FY 2008.

This valuation shows a normal cost equal to 10.42% of pay. The State increased its contribution rate to 6.58% of pay as of September 1, 2007, which combined with the member contribution rate of 6.40% of pay provides a total contribution rate of 12.98% of pay. Therefore, there is 2.56% of pay available to amortize the UAAL. The contributions provided by this portion of the contribution rate are sufficient to amortize the current unfunded actuarial accrued liabilities of the System over a period of 20.7 years, which is less than the statutory limit of 31 years.

The actuarial valuation report as of August 31, 2008 reveals that while the System has an unfunded liability in excess of \$11 billion, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 90.5%. However, because of the significant shortfall in investment income in FY2008, the System is now deferring net investment losses of \$5.3 billion compared to the last valuation when the System was deferring \$8.7 billion in net investment gains. Therefore, in the absence of actuarial gains in the future, the funded status of the System should decline as these deferred investment losses are recognized.

The System earned a negative (4.2)% return on a dollar-weighted market value of assets basis for the plan year ending August 31, 2008. Despite this shortfall, the System experienced a gain on the actuarial value of assets of \$1.2 billion and a gain on the actuarial liabilities of \$0.7 billion for a total experience related gain of \$1.9 billion.

It should be noted that the above information is based on the measurement of the System as of August 31, 2008. As we are all aware, the investment markets have suffered tremendous losses since that date. If the actuarial valuation had been performed at the end of October instead of the end of August, the results would have been dramatically different. The actuarial gains discussed above would have been completely eliminated by the additional investment losses that have occurred since the valuation date.

This would have occurred despite the fact that we normally only recognize 20% of a given year's investment income excess/ (shortfall) in the valuation. However, with the sharp decline in the market value of assets, we would have been outside the 80% - 120% market value corridor, which would have required the use of a lower actuarial value of assets than the normal smoothing method.

In the absence of a significant recovery in the investment markets during the remainder of fiscal year 2009, the contribution rate needed to amortize the UAAL over 30 years will increase over the next few valuation cycles.

#### **Plan Provisions**

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. This valuation reflects the changes to plan provisions as enacted by the 80<sup>th</sup> Texas Legislature. There have been no changes to the benefit provisions of the System since the prior valuation.

#### **Disclosure of Pension Information**

Effective for the fiscal year ending August 31, 1996, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25. The required disclosure information is included in the body of the valuation report.

#### **Actuarial Methods and Assumptions**

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2007 and were adopted on April 11, 2008. Please see our experience study report dated January 25, 2008. The following details the major recommendations from that report:

- Make no change in the investment return assumption
- Modifications to the salary increase assumptions
- Increase the payroll growth rate assumption from 3.0% to 3.5%
- New post-retirement mortality tables for healthy lives
- Decrease rates of termination during select period and introduce new ultimate schedule based on years from retirement

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

#### **Data**

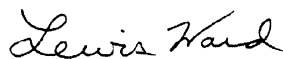
In preparing the August 31, 2008 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,  
Gabriel, Roeder, Smith & Company



W. Michael Carter, FSA, EA, MAAA  
Senior Consultant



Lewis Ward  
Consultant



Joe Newton, FSA, EA, MAAA  
Consultant

Gabriel Roeder Smith & Company



Gabriel Roeder Smith & Company  
Consultants & Actuaries

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Irving, TX 75038-2631

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November 5, 2008

**BOARD OF TRUSTEES**

Teacher Retirement System of Texas  
1000 Red River Street  
Austin, TX 78701-2698

**Subject: GASB 43 Actuarial Valuation as of August 31, 2008 for TRS-Care**

Submitted in this report are the results of an Actuarial Valuation of the liabilities associated with the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS). The date of the valuation was August 31, 2008. This report was prepared at the request of TRS.

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results.

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board based on the 2008 Experience Study of TRS. Assumptions applicable only to TRS-Care have not changed since the prior report, and they are disclosed in the assumptions section of this report.

To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods.

One or more of the undersigned are members of the American Academy of Actuaries and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

Respectfully submitted,

William J. Hickman  
Senior Consultant

Joseph P. Newton, FSA, MAAA  
Senior Consultant

# Actuarial Present Value of Future Benefits

PENSION TRUST FUND

ACTUARIAL VALUATION - AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

	2008	2007
<b>Present Value of Benefits Presently Being Paid:</b>		
Service Retirement Benefits	\$ 51,453,985,083	\$ 49,127,012,614
Disability Retirement Benefits	874,471,160	867,741,482
Death Benefits	754,788,755	744,775,521
Present Survivor Benefits	195,511,577	193,404,910
13th Check Payable January 2008		359,741,971
<b>TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID</b>	<b>\$ 53,278,756,575</b>	<b>\$ 51,292,676,498</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Service Retirement Benefits	\$ 87,025,085,373	\$ 81,124,860,135
Disability Retirement Benefits	1,142,684,668	998,734,203
Termination Benefits	5,331,386,735	4,683,072,513
Death and Survivor Benefits	1,359,266,421	1,433,711,132
<b>TOTAL ACTIVE MEMBER LIABILITIES</b>	<b>\$ 94,858,423,197</b>	<b>\$ 88,240,377,983</b>
<b>Present Value of Benefits Payable in the Future to Present Inactive Members:</b>		
Inactive Vested Participants		
Retirement Benefits	\$ 1,486,427,638	\$ 1,337,890,796
Death Benefits	106,067,772	103,845,430
<b>TOTAL INACTIVE VESTED BENEFITS</b>	<b>\$ 1,592,495,410</b>	<b>\$ 1,441,736,226</b>
Refunds of Contributions to Inactive Non-vested Members	\$ 257,432,662	\$ 241,750,800
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 1,011,941,816	\$ 973,143,379
<b>TOTAL INACTIVE LIABILITIES</b>	<b>\$ 2,861,869,888</b>	<b>\$ 2,656,630,405</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 150,999,049,660</b>	<b>\$ 142,189,684,886</b>

## Summary of Cost Items

	2008	2007
Actuarial Present Value of Future Benefits	\$ 150,999,049,660	\$ 142,189,684,886
Present Value of Future Normal Costs	(29,242,507,363)	(26,225,963,014)
Actuarial Accrued Liability	\$ 121,756,542,297	\$ 115,963,721,872
Actuarial Value of Assets	(110,233,419,723)	(103,419,088,392)
<b>UNFUNDED ACTUARIAL ACCRUED LIABILITY</b>	<b>\$ 11,523,122,574</b>	<b>\$ 12,544,633,480</b>

# Actuarial Present Value of Future Benefits

HEALTH BENEFITS TRUST FUND - RETIRED PLAN

ACTUARIAL VALUATION - AUGUST 31, 2008 (With Comparative Totals for August 31, 2007)

	2008	2007
<b>Present Value of Benefits Being Paid:</b>		
Future Medical Claims	\$ 6,415,785,531	\$ 5,972,310,138
Future Rx Claims	7,682,912,536	7,232,071,347
Retiree Premiums Collected	(4,780,209,360)	(4,875,831,743)
<b>NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES</b>	<b>\$ 9,318,488,707</b>	<b>\$ 8,328,549,742</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Future Medical Claims	\$ 19,813,365,411	\$ 18,397,223,154
Future Rx Claims	20,014,551,561	18,381,170,348
Retiree Premiums Collected	(13,724,782,116)	(14,154,287,216)
<b>NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES</b>	<b>\$ 26,103,134,856</b>	<b>\$ 22,624,106,286</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 35,421,623,563</b>	<b>\$ 30,952,656,028</b>

## Summary of Cost Items

Actuarial Present Value of Future Benefits	\$ 35,421,623,563	\$ 30,952,656,028
Present Value of Future Normal Costs	(13,108,725,516)	(11,204,990,717)
Actuarial Accrued Liability	\$ 22,312,898,047	\$ 19,747,665,311
Actuarial Value of Assets	(728,839,325)	(622,796,928)
<b>UNFUNDED ACTUARIAL ACCRUED LIABILITY</b>	<b>\$ 21,584,058,722</b>	<b>\$ 19,124,868,383</b>

These reports include the first actuarial valuation of TRS-Care dated August 31, 2008. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and Chapter 2264, Subtitle F, Title 10, Government Code.

TRD-200806303

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Filed: December 2, 2008



## Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of San Marcos, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the San Marcos Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of San Marcos. TxDOT CSJ No. 0914SM-RCO. Design services to: Install chain link and barbed wire fence for airport perimeter; install gates; install fence signs; clear brush along airport perimeter; provide north side development plan and design of initial phase at the San Marcos Municipal Airport.

The DBE goal for the current project is 5%. TxDOT Project Managers are Stephanie Kleiber for the design services and Daniel Benson for the development plan.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Construct north side apron and taxiway
2. Construct new entrance road for north side terminal area
3. Design and construct new perimeter road
4. Construct new terminal building apron
5. Overlay taxiway J

6. Replace MITL on all taxiways (except taxiway J)

7. New terminal building

The City of San Marcos reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at:

[www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm)

by selecting "San Marcos Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at:

[www.txdot.gov/services/aviation/consultant.htm](http://www.txdot.gov/services/aviation/consultant.htm).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than January 14, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-200806308

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: December 2, 2008



### Aviation Division - Request for Proposal for Professional Services

The City of Dallas, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Dallas, Dallas Executive Airport. TxDOT CSJ No. 0918DALAS. Scope: Prepare a Business Plan to provide an overview analysis of the airport addressing airport policy, airport building standards, airport rates and charges, market analysis, financial analysis and risk assessment; provide an assessment of business/economic development opportunities; recommend a five year strategic course of action to pursue development and to address issues at the Dallas Executive Airport.

There is no DBE goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/services/aviation/consultant.htm](http://www.txdot.gov/services/aviation/consultant.htm).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

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The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200806215

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: November 25, 2008



### Public Notice - Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2010 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2010, and the four quarterly issues of the *Texas Events Calendar*, beginning with the Summer 2009 calendar. The Summer 2009 calendar lists events scheduled for June, July, and August 2009. The Fall 2009 calendar lists September, October, and November 2009 events. The Winter 2009-2010 calendar lists December 2009, January 2010, and February 2010 events; and the Spring 2010 calendar lists events scheduled for March 2010, April 2010, and May 2010. The department is now accepting advertising for all monthly 2009 issues of *Texas Highways* magazine.

All entities and individuals on the mailing list will be contacted by mail sent out on January 12, 2009, and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 12, 2009, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first-served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 12, 2009, for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 12, 2009. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide*. If more than one insertion order for any premium position is received on the same day, the department will

determine selection by a drawing held on February 27, 2009. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is February 13, 2009, for the Summer 2009 issue; May 15, 2009, for the Fall 2009 issue; August 14, 2009, for the Winter 2009-2010 issue; and November 13, 2009, for the Spring 2010 issue. The deadline for accepting materials for the *Texas Events Calendar* is February 27, 2009, for the Summer 2009 issue; May 29, 2009, for the Fall 2009 issue; August 28, 2009, for the Winter 2009-2010 issue; and November 30, 2009, for the Spring 2010 issue. The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

*Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or recreational interest to *Texas Highways* readers.

The *Texas Accommodations Guide* is the state's official lodging guide and includes information on hotels/motels, condominiums, bed & breakfasts, cabin/guest homes, and guest ranches. This publication is distributed in the standard package sent to requestors seeking information about Texas and also is distributed through the 12 Travel Information Centers operated by the Texas Department of Transportation.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar*, *Texas Highways* magazine, and the *Texas Accommodations Guide* are included in this notice.



## TEXAS STATE TRAVEL GUIDE

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Year 2010 Rate Base: 800,000  
Space Closing: October 6, 2009  
Materials Due: October 13, 2009  
First Distribution: January 2010

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### Advertising Rates

<b>ROP:</b>	<b>Gross</b>	<b>Net*</b>
Full Page	\$22,540	\$19,159
Two Thirds (2/3) Page	\$16,102	\$13,687
Half (1/2) Page	\$13,540	\$11,509
One Third (1/3) Page	\$ 8,120	\$ 6,902
One Sixth (1/6) Page	\$ 5,120	\$ 4,352
<b>Premium Positions:</b>		
	<b>Gross</b>	<b>Net*</b>
Cover 2 (Inside Front)	\$32,500	\$27,625
Cover 3 (Inside Back)	\$30,260	\$25,721
Cover 4 (Back)	\$40,595	\$34,506
Spread (Inside Front Cover Inside Back Cover)	\$55,040	\$46,784

\*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar

Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar

Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Discounts apply to [www.texashighways.com](http://www.texashighways.com)

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 13, 2009.

# TEXAS EVENTS CALENDAR

## Advertising Rates/Due Dates

Year 2009/2010 Rate Base:      90,000 Circulation: Spring, Summer, Fall  
 75,000 Circulation: Winter

Black/White	1X		2X		4X	
FULL PAGE	\$1,600.00	\$1,360.00	\$1,550.00	\$1,317.50	\$1,500.00	\$1,275.00
HALF PAGE	\$1,100.00	\$ 935.00	\$1,075.00	\$ 913.75	\$1,025.00	\$ 871.25
THIRD PAGE	\$ 800.00	\$ 680.00	\$ 775.00	\$ 658.75	\$ 725.00	\$ 616.25

4-Color	1X		2X		4X	
FULL PAGE	\$2,240.00	\$1,904.00	\$2,170.00	\$1,844.50	\$2,100.00	\$1,785.00
HALF PAGE	\$1,540.00	\$1,309.00	\$1,505.00	\$1,279.25	\$1,435.00	\$1,219.75
THIRD PAGE	\$1,120.00	\$ 952.00	\$1,085.00	\$ 922.25	\$1,015.00	\$ 862.75

COVERS (4-COLOR)	1X		2X		4X	
COVER 2	\$3,500.00	\$2,975.00	\$3,250.00	\$2,762.50	\$3,000.00	\$2,550.00
COVER 3	\$3,000.00	\$2,550.00	\$2,750.00	\$2,337.50	\$2,500.00	\$2,125.00
COVER 4	\$4,200.00	\$3,570.00	\$4,000.00	\$3,400.00	\$3,800.00	\$3,230.00

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

### Advertising Due Dates:

<u>Issue Date</u>	<u>Space Closing</u>	<u>Materials Due</u>
Summer 2009 (Jun, Jul, Aug-2009)	Feb. 13, 2009	Feb. 27, 2009
Fall 2009 (Sep, Oct, Nov-2009)	May 15, 2009	May 29, 2009
Winter 2009-10 (Dec-2009, Jan, Feb-2010)	Aug. 14, 2009	Aug. 28, 2009
Spring 2010 (Mar, Apr, May-2010)	Nov. 13, 2009	Nov. 30, 2009

# TEXAS HIGHWAYS MAGAZINE

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## Texas Rate Card

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$7120	\$6764	\$6550	\$6337	\$6123	\$5910
2/3 Page	\$5880	\$5586	\$5410	\$5233	\$5057	\$4880
1/2 Page	\$4626	\$4395	\$4256	\$4117	\$3978	\$3840
1/3 Page	\$3326	\$3160	\$3060	\$2960	\$2860	\$2761
1/6 Page	\$1830	\$1739	\$1684	\$1629	\$1574	\$1519
Cover 2	\$9100	\$8645	\$8372	\$8099	\$7826	\$7553
Cover 3	\$8700	\$8265	\$8004	\$7743	\$7482	\$7221

Notes All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Section Guides (Holiday, Product, and Destination): \$1300 per insertion

Commission: 15% to recognized agencies providing print ready materials.  
Payment: Cash with order or net 30 from invoice date.  
Space Deadline: 27<sup>th</sup> of the third month preceding issue date.  
Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

## Web Site Advertising

Home page sponsorship: \$2,000/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page sponsorship free on a first come, first served basis.

Section page banners: \$500/mo 150 x 300 pixels, \$300/mo 150 x 150 pixels

Marketplace: \$600/year

# TEXAS HIGHWAYS MAGAZINE

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## National Rate Card

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$11,867	\$11,273	\$10,917	\$10,562	\$10,205	\$9,850
2/3 Page	\$9,800	\$9,310	\$9,016	\$8,722	\$8,428	\$8,133
1/2 Page	\$7,710	\$7,325	\$7,093	\$6,682	\$6,630	\$6,400
1/3 Page	\$5,543	\$5,267	\$5,100	\$4,933	\$4,767	\$4,601
1/6 Page	\$3,050	\$2,898	\$2,807	\$2,715	\$2,623	\$2,532
Cover 2	\$15,167	\$14,408	\$13,953	\$13,498	\$13,043	\$12,588
Cover 3	\$14,500	\$13,775	\$13,340	\$12,905	\$12,470	\$12,035

Notes All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Section Guides (Holiday, Product, and Destination): \$2,167 per insertion

Commission: 15% to recognized agencies providing print ready materials.  
Payment: Cash with order or net 30 from invoice date.  
Space Deadline: 27<sup>th</sup> of the third month preceding issue date.  
Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

## Web Site Advertising

Home page sponsorship: \$3,333/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page sponsorship free on a first come, first served basis.

Section page banners: \$833/mo 150 x 300 pixels, \$500/mo 150 x 150 pixels

Marketplace: \$1,000/year

# TEXAS ACCOMMODATIONS GUIDE

## Listing Fees

Individual Property Listing Fee: \$225

Individual Property Listing Fee for TH&LA Members: \$125

Corporate Property Listing Fee: \$125

Corporate Property Listing Fee for TH&LA Members: \$115

Terms: Payee must pay on a single invoice with a minimum of 25 listings

TACVB Property Listing Fee: \$135

TACVB Property Listing Fee for TH&LA Members: \$125

Terms: Payee must pay on a single invoice with a minimum of 5 listings

Upgrades: Bold/All Cap \$25.00      2<sup>nd</sup> Color \$25.00

Corporate participants will receive a 10% discount on all insertion orders placed in the Texas State Travel Guide, Texas Events Calendar, and/or Texas Highways Magazine regardless of frequency.

TRD-200806309  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: December 2, 2008



Request for Competing Proposals - Existing I-10 Interchange at Schuster Avenue, El Paso

Pursuant to Transportation Code, §222.104, and Texas Administrative Code, Title 43, Chapter 5, Subchapter E, the Texas Department of Transportation (department) announces the issuance of its Request for Competing Proposals (RFCP) to design, construct, and finance multiple improvements to the existing I-10 interchange at Schuster Avenue (University of Texas at El Paso's main entrance) in El Paso, Texas under a pass-through toll agreement.

The department has received a proposal from a private entity under Texas Administrative Code, Title 43, Chapter 5, Subchapter E. The department intends to evaluate that proposal, and it may negotiate a pass-through toll agreement with the proposer based on the proposal. The department will accept for simultaneous consideration any competing proposals it receives that are submitted in accordance with Texas Administrative Code, Title 43, Chapter 5, Subchapter E, and the RFCP by the due date. The due date for competing proposals is 3:00 p.m. Central Standard Time, Monday, January 26, 2009. Competing proposals should be addressed to Phillip Russell, Assistant Executive Director for Innovative Project Development, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701.

The project as proposed calls for multiple improvements to the existing I-10 interchange at Schuster Avenue (University of Texas at El Paso's main entrance) in west El Paso, El Paso County, Texas.

The general criteria that will be used to evaluate all proposals and the relative weight given to the criteria are as follows: General Experience and Qualifications - 40%; Project Development and Benefits - 60%. Specific evaluation criteria are set forth in the RFCP.

The department will make the RFCP available electronically on the Texas Electronic State Business Daily,

<http://esbd.tbpc.state.tx.us/1380/sagency.cfm>

and at the following address: Texas Department of Transportation, Attention: Mark Marek, 118 East Riverside Drive, Building 118, Austin, Texas 78704, on or after Friday, December 12, 2008.

TRD-200806325  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: December 3, 2008



## University of North Texas

Invitation for Consultants to Provide Offers of Consulting Services Relating to the University's Data Storage, Backup Methodologies and Technologies

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas and its member institutions.

Scope of Work:

The selected consulting firm will be responsible for assisting the UNT and member institutions in studying and analyzing the University's data storage, backup methodologies and technologies. The consultation is

necessary because the University of North Texas does not have the specialized experience or staff resources available. The University of North Texas believes that such expert consulting services will be cost effective by maximizing its cost savings in meeting expected and potential future data storage needs.

#### Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers the UNT, and any other information the consultant desires the UNT to consider in connection with the consultant's offer; (8) information to assist the UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist the UNT in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist the UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist the UNT in assessing the overall cost to the UNT for the requested services to be performed; and (12) information to assist the UNT in assessing the consultant's capability and financial resources to perform the requested services.

#### Selection Process:

The consulting services sought herein do not relate to any services previously provided to the UNT.

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not

in its best interest, as determined by UNT. UNT reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

#### Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to the Request for Proposal (RFP 752-9-69687ER) located at <http://pps.unt.edu> by the Submittal Deadline and will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by University of North Texas System and member institution personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

#### Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation; and (2) the consultant's recognition that some subjective judgments must be made by UNT during this Invitation process.

#### Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because the University of North Texas does not have the specialized experience or the staff resources available to support the development of a project plan designed to maximize UNT's future data storage needs. The University of North Texas believes that such expert consulting services will be cost effective and is essential to maximize UNT's expected and potential future data storage needs.

#### Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Request for Proposal (RFP 752-9-69687ER) located on UNT Purchasing and Payment Services' website at <http://pps.unt.edu> and any other relevant information in a clear and concise written format to: Elaine Robbins, Purchasing Specialist IV, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 2:00 p.m., CST, Monday, January 12, 2009 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered. Please also note there will be a pre-proposal meeting scheduled for December 11, 2008, at 2:30 p.m., CST. More details are located in the posted Request for Proposal.

#### Questions:

Questions concerning this Invitation should be directed to: Elaine Robbins, Purchasing Specialist IV, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205; (940) 565-2503. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200806326

Carrie Stoeckert  
Assistant Director  
University of North Texas  
Filed: December 3, 2008



## Workforce Solutions Brazos Valley Board

### Notice of Release of Invitation for Bid for Gas Cards

On December 8, 2008 Workforce Solutions Brazos Valley Workforce Centers, operated by Arbor E&T, will release an Invitation for Bid (IFB) for gas cards in the following counties: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. Arbor E&T is seeking multiple contractors qualified and experienced in providing gas cards. The complete scope of required services and the proposal requirements are contained in the Invitation for Bid which may be viewed and downloaded beginning at 10:00 a.m. CST on December 8, 2008 at [www.bvjobs.org](http://www.bvjobs.org).

**Due Date:** An original and five (5) copies of a written proposal are due to the below P.O. DRAWER no later than Monday, December 29, 2008, 4:00 p.m. CST. Faxed or email proposals are not acceptable. Proposals received after the indicated due date and time **regardless of delivery method** will not be accepted or considered for award.

**Proposals may be hand delivered to:**

ATTENTION: FINANCE MANAGER

JAMES SWEATT  
Workforce Solutions Brazos Valley  
3991 East 29th St.  
Bryan, Texas 77802

**Proposals may be mailed to:**

ATTENTION: FINANCE MANAGER

JAMES SWEATT  
Workforce Solutions Brazos Valley  
P.O. Drawer 4128  
Bryan, Texas 77805

Email address for questions only: [jsweatt@bvcog.org](mailto:jsweatt@bvcog.org)

Proposals received after the deadline will not be considered. Arbor E&T accepts no responsibility for late proposals.

TRD-200806312  
Tom Wilkinson  
Executive Director  
Workforce Solutions Brazos Valley Board  
Filed: December 2, 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).